

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL

Before The Honorable Phyllis J. Hamilton, Judge

United States of America,)	Jury Trial
)	
Plaintiff,)	Volume 7
)	
VS.)	NO. CR 14-00590 PJH
)	
RICHARD THOMAS GRANT,)	Pages 1164 through 1367
)	
Defendant.)	Oakland, California
_____)	Thursday, June 16, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Thursday, June 16, 2016

8:43 a.m.

P R O C E E D I N G S

(The following proceedings were heard in the presence of the jury:)

THE CLERK: Please be seated and come to order.

THE COURT: All right. Good morning, counsel. Good morning, ladies and gentlemen of the jury.

All right. Mr. Cohan, call your next witness.

MR. COHAN: Thank you, your Honor.

The Defense calls Dr. George W. Woods to the witness stand.

THE CLERK: Dr. Woods, please step up here and raise your right hand.

GEORGE W. WOODS, JR., M.D.

called as a witness for the DEFENDANT, having been duly sworn, testified as follows:

THE CLERK: Please be seated.

THE WITNESS: Thank you.

THE CLERK: Please state your full name and spell your last name for the record and speak clearly into the mic.

THE WITNESS: Thank you. Good morning.

THE COURT: Good morning.

THE WITNESS: Good morning.

My name -- I apologize -- is George W. Woods, Junior. W-o-o-d-s. Actually the "W" -- I should probably say that --

George Washington Woods, Junior, last name W-o-o-d-s.

DIRECT EXAMINATION

BY MR. COHAN:

Q. Good morning, doctor.

(Simultaneous colloquy.)

THE WITNESS: Can I just take a moment to --

(Pause in the proceedings.)

THE WITNESS: Okay.

BY MR. COHAN:

A. Good morning, Mr. Cohan.

Q. Can you tell the ladies and gentlemen of the jury what your educational background is.

A. Sure. I went to the University of Utah Medical School --
Actually before that, I went to Westminster College in Salt Lake City, Utah.

I then went to the University of Utah Medical Center. I graduated in 1977. I then did a straight medical internship at Highland Hospital here in Oakland. I then did a psychiatric residency at Pacific Medical Center in San Francisco. I was chief resident my last year.

I then did a fellowship with the National Institute of Mental Health and American Psychiatric Association in geriatric psychopharmacology, which is the study of medications and the interactions of medications within an elderly population. And that was the extent of my formal

1 education.

2 I've continued my continuing education credits, et cetera.

3 Q. And do you live in the Bay Area, Doctor?

4 A. I live right down the street.

5 Q. Okay. And for how long have you lived in the Bay Area?

6 A. My first time in the Bay Area was 1969 through 1972. I
7 worked for IBM during that time. And then I came back to the
8 Bay Area in 1977. I been here ever since.

9 Q. Okay. Now, do you -- are you licensed to practice
10 medicine in the State of California?

11 A. Yes. Yes, I am.

12 Q. And when did you obtain your license to practice medicine
13 in California?

14 A. I believe it was 1977.

15 Q. Okay. If your C.V. says 1979, is it wrong?

16 A. No. That would have been after my internship; that's
17 correct.

18 Q. Okay. And then are you certified by the American Board of
19 Psychiatry and Neurology?

20 A. That's correct. In psychiatry.

21 Q. Okay.

22 A. Okay. The American Board of Psychiatry and Neurology
23 certifies both psychiatrists and neurologists, so if you're
24 sitting for your psychiatry boards, your test is 70 percent
25 psychiatry, 30 percent neurology. If you're sitting for your

1 neurology boards, it's 70 percent neurology, 30 percent
2 psychiatry.

3 **Q.** Okay. And then there's an indication that you're a fellow
4 of the American Psychiatric Association. What -- What is
5 that?

6 **A.** The fellow- -- fellowship is a distinction that is given
7 to psychiatrists. There are two. There's a fellowship, and
8 there's a distinguished fellowship. I'm a fellow. I been a
9 fellow for about eight years.

10 **Q.** Okay. And reviewing your license and certifications, it
11 indicates that from 2009 to 2013, you were secretary general
12 of the International Academy of Law and Mental Health.

13 What is that, sir?

14 **A.** The International Academy of Law and Mental Health is
15 based at the University of Montreal. It's an international
16 organization that focuses on issues of both law and mental
17 health and ethics. I'm the current president of that
18 organization.

19 **Q.** Now, you have a lengthy list of experience called
20 "clinical experience and consultation." Can you briefly
21 review and summarize that for the ladies and gentlemen of the
22 jury?

23 **A.** Sure. The -- The focus of my clinical practice is what's
24 called consultation liaison psychiatry or neuropsychiatry.
25 And consequently, I focus on psychiatric disorders that

1 manifest -- with medical problems.

2 If someone has a medical problem like diabetes, for
3 example, there are a very few people that know that diabetes
4 has significant psychiatric problems that go along with it.

5 Or things like hypothyroidism. Hyperthyroidism looks much
6 like bipolar disease. Hypothyroidism looks much like
7 depression.

8 So what I really specialize in is looking at medical
9 diseases that manifest with psychiatric disorders or looking
10 at psychiatric illnesses that have some medical component.

11 As such -- Should I give some of my experience in that
12 area?

13 **Q.** Please, if you would. I want you to pick and choose
14 because the list is so long, I don't want to go through all of
15 it.

16 **A.** Okay. During my residency, I took electives in
17 neurology -- extra electives in neurology, and focused
18 primarily on neurology and psychopharmacology, although I -- I
19 still do psychotherapy.

20 The reason why I focused on an elderly population
21 initially was because folks that are my age now, the way we
22 metabolize medicines, the way that we change in terms of our
23 ability to -- to -- our brain to function normally is much,
24 much like the brain of a child. And so as children grow,
25 their brains develop, and then -- and as we age, our brains

1 change in the same kind of a backward configuration.

2 So in studying geriatrics, it really gave me an
3 opportunity to look at the life span of how the brain works.

4 I worked as a family physician for three years during my
5 residency with the Clinica De La Raza in Blythe, California.
6 And I worked as an emergency room physician both at Highland
7 and Contra Costa County and at San Francisco General in
8 addition to my psychiatric work.

9 When I came out and started working in my psychiatric
10 practice, I maintained that medical focus and have continued
11 to do that up until today.

12 I've stayed up to date on certain aspects of internal
13 medicine as they relate to psychiatric illness, but my focus
14 has really gone more toward the neurological component of
15 psychiatric illness.

16 So today, I treat people that primarily have
17 neuro-developmental disorders, disorders that were created
18 typically in either childhood or before -- while the child is
19 growing, so that specialty really looks at fetal alcohol,
20 Fragile X, Down Syndrome, and other types of disorders that
21 occur within -- often during gestation while the -- the child
22 is growing.

23 **Q.** You just testified about treating -- I thought you said
24 neuro-developmental disorders; is that right?

25 **A.** That's correct.

1 **Q.** Have you identified a -- a genetic component whereby
2 people who are related genetically share certain mental
3 conditions or disorders because of the structure of their
4 brain just based on the DNA?

5 **A.** What -- It really depends upon the disorder. Most
6 psychiatric disorders are transmitted in what's called a
7 heterogenous transmission. And what that means is that
8 they're on a lot of different genes.

9 So the transmission of most psychiatric disorders, mood
10 disorders, like bipolar disorder or depression, even
11 schizophrenia, from a genetic point of view, they're really on
12 a number of different genes, and they're transmitted in the
13 same way that one transmit -- families transmit diabetes.

14 Let me give you an example. If you are -- If you are born
15 into a family that has diabetes, you might get juvenile onset
16 diabetes, which is very, very early. You might get Type II
17 diabetes later in life. You may not get diabetes at all.

18 And this is the range of what we call genetic penetrance,
19 how much of that genetic pool did you get. Typically children
20 that get a disease have gotten the greatest load. They've
21 gotten the greatest genetic pool. If you get it later in
22 life, the chances are you have less of that genetic pool.

23 Psychiatric disorders are the same. So you may -- a
24 person that has a family history of a particular psychiatric
25 disease may only get certain symptoms, they may not get any of

1 it.

2 For example, in mood disorders, bipolar disorder or
3 depression, if a family member has a mood disorder, then
4 there's about a 8 percent chance -- higher chance that someone
5 else in that family will have some symptoms. They may not get
6 the entire mood disorder but they'll have some symptoms. They
7 may not have the entire spectrum. I mean, the entire -- but
8 they may have some symptoms. So that's really how it's
9 transmitted, is what we called a heterogenous transmission.

10 **Q.** Well, I want to go back to more of your clinical
11 experience and consultations. You have a section identified
12 as "International Clinical Experience and Consultations."

13 Could you briefly summarize that for the jury?

14 **A.** Sure.

15 My first experience internationally was 1992 in Senegal.
16 Since that time, I've worked as a second responder and a third
17 responder. I worked in Kenya in 1998. I've worked -- I'm
18 currently working in Malawi. I've done training in Japan and
19 Italy and Uganda. I taught for six months at Makerere
20 University. I've done work in Zanzibar. And most of this
21 work has been -- particularly in -- here and Africa -- most of
22 this work has been differentiating psychiatric disorder from
23 neurological disorder.

24 In Zanzibar, the issue was what we called cerebral
25 malaria. Cerebral malaria or malaria of the brain presents

1 much like schizophrenia. And so if a child that is four or
2 five years old gets cerebral malaria, they may look to be okay
3 for a few years. But by the time, say, they're 13 or 14 or
4 15, which is what we called the prodromal period,
5 p-r-o-d-r-o-m-a-l -- the prodromal period and they may start
6 to develop symptoms of mental illness, we have to
7 differentiate whether that is a symptom of cerebral malaria,
8 which it could well be, or whether it's a symptom of
9 schizophrenia.

10 So that's what most of my work internationally has been,
11 is to differentiate between psychiatric disorders and medical
12 disorders if -- if necessary.

13 **Q.** Okay. If I can invite your attention, then, to your
14 Faculty and Professional Appointments, are you currently
15 teaching at the University of California Berkeley School of
16 Law?

17 **A.** I am teaching at the University of California Berkeley in
18 the law school. I'm also teaching at Morehouse University,
19 Department of Psychiatry. I'm currently on sabbatical until
20 2017 with both of those because of my presidency.

21 **Q.** The presidency of the International Academy of Law and
22 Mental Health?

23 **A.** That's correct.

24 **Q.** Okay.

25 Have you given clinical lectures -- Let me just -- I've

1 got a list of a lot of clinical lectures. Have you given
2 clinical lectures in areas that bear on what we're going to
3 get to in a little bit about Mr. Grant?

4 **A.** Yes.

5 **Q.** And --

6 **A.** I've given lectures on mood disorders, on mood disorders
7 or disorders where there's a disruption of how -- of feeling
8 that leads to a disruption of thinking, bipolar disorder,
9 depression, and I've given lectures on those. I've also given
10 lectures on neurological disorders that present with
11 psychiatric symptoms.

12 **Q.** And have you authored any clinical publications, Doctor?

13 **A.** Yes.

14 **Q.** And what sort of clinical publications have you authored?

15 **A.** I published an article, I believe in 2012 on neurobehavior
16 assessment, how one goes about assessing these types of cases
17 and these types of circumstances.

18 I've written on fetal alcohol. I've written on
19 neuroimaging. We just this -- late last year or early this
20 year along with Erin Bigler at BYU and David Friedman at UCLA,
21 we published a paper on neuroimaging in the courts.

22 Just a couple of days ago, I had two chapters published on
23 a book that should be coming out on Amazon pretty quickly on
24 financial fraud and the cognitive aspects of financial fraud.
25 I think that was last -- what's today, Thursday. I think that

1 came out on Monday or Tuesday.

2 Q. And you authored chapters on personal and situational
3 contributors to fraud victimization?

4 A. That's correct.

5 Q. Is that right?

6 A. That's correct.

7 Q. And did you develop a four-factor model to determine, I
8 guess, predisposition to gullibility for --

9 MR. KLUGE: Objection, Your Honor. He's leading the
10 witness at this point.

11 THE COURT: Sustained.

12 BY MR. COHAN:

13 Q. Do you recall the title of the book?

14 A. I don't, but I've got it written down.

15 Q. Okay.

16 A. (Reviewing documents.)

17 If I updated my vita. Let me see here.

18 (Reviewing document.)

19 Financial crimes, Psychological, Technological, and
20 Ethical Issues, Springer Publishing.

21 Q. Okay. Do you know Rick Grant?

22 A. I've met Mr. Grant, yes.

23 Q. And how did you come to know Mr. Grant?

24 A. You asked me to evaluate Mr. Grant.

25 Q. And when did that process begin, to the best of your

1 recollection?

2 **A.** I think that process began --

3 **Q.** You can go ahead and refresh your recollection or use your
4 reports.

5 **A.** Thank you.

6 **MR. KLUGE:** Your Honor, I'm going to object. If he
7 wants to ask Dr. Woods a question, if Dr. Woods --

8 **THE COURT:** Yes.

9 **MR. KLUGE:** -- can't recall, he can refresh his
10 recollection. But Mr. Cohan can't direct himself to go ahead
11 and read his report to refresh his recollection.

12 **THE COURT:** Yes. Mr. Cohan, that's correct.

13 **MR. COHAN:** Just going to prolong things, but I'll
14 abide by the court's ruling, of course.

15 **THE WITNESS:** I interviewed Mr. Grant on May 31st,
16 June 23rd, and August 16th.

17 **BY MR. COHAN:**

18 **Q.** Of what year?

19 **A.** Of 2015.

20 **Q.** Okay?

21 **A.** And I also interviewed his wife Caroline on August 16th of
22 2015.

23 **Q.** Are you unable to recall those dates without looking at
24 your report, Doctor?

25 **A.** Probably.

1 Q. Okay.

2 Now, when I requested that you perform a psychiatric and
3 psychological evaluation -- or I guess a neuropsychiatric
4 evaluation, did I indicate that I had a couple of questions
5 that I wanted you to address to see whether you could provide
6 us with an opinion to a reasonable degree of neuropsychiatric
7 certainty?

8 A. Yes.

9 Q. And what were those questions that I asked you to try and
10 answer so you could give an opinion to this jury?

11 A. There were two questions. The first question was whether
12 Mr. Grant suffered from a mental disease, defect, or condition
13 that affected his ability to understand his legal duty to file
14 individual income tax returns and to pay income tax.

15 The second question was does this mental disease defect or
16 condition increase Mr. Grant's gullibility concerning
17 promoters of schemes to avoid -- to legally avoid income tax.

18 Q. And "legally" was in quotes?

19 A. That's correct.

20 Q. Okay.

21 So when you received that request, what did you begin to
22 do and what did you do to perform the task?

23 A. Well, I, first of all, received some materials from you
24 that included some records of communications between Mr. Grant
25 and the Internal Revenue Service. There were interviews by

1 the Internal Revenue Service by various people, his brother,
2 his accountant, a bookkeeper, several of his employees.

3 There were materials that related to different
4 organizations that Mr. Grant belonged to that -- that were
5 part of his understanding of the -- his approach to the IRS
6 issue.

7 Q. Do you believe that's complete or should you look at
8 something to try and refresh your recollection?

9 A. I think that's close to complete.

10 Q. Okay.

11 A. And then I -- obviously I interviewed him as well.

12 Q. Okay. And did you interview his wife?

13 A. I did interview his wife.

14 Q. Okay. Did you perform tests and have psychologists
15 perform tests on Mr. Grant?

16 A. I had Dr. Stacy Wood, W-o-o-d, administer
17 neuropsychological tests.

18 Q. And can you tell us what you -- what you learned about
19 Mr. Grant's present circumstances that led me to request that
20 you perform your evaluation?

21 A. Mr. Grant had been indicted for not -- for tax evasion,
22 for not paying his taxes. And -- And through the -- through
23 the materials, I've learned of his relationship with a number
24 of organizations that appear to promote the legality of not
25 paying his taxes.

1 And I also learned quite a bit about Mr. Grant and
2 Mr. Grant's -- in my opinion, Mr. Grant's mental disorder.

3 **Q.** Okay.

4 Well, can you tell the ladies and gentlemen of the jury
5 how you went about doing the research or investigation that
6 enabled you to express an opinion that Mr. Grant does indeed
7 have a -- a mental illness?

8 **A.** Sure.

9 I interviewed Mr. Grant on -- on three different
10 occasions. I also had, as I mentioned, Dr. Wood, do
11 neuropsychological testing -- neuropsychological testing is
12 different than what we normally think of in terms of
13 personality testing.

14 Personality testing is like an MM -- a Minnesota
15 Multiphasic Personality Inventory where -- kind of tries to
16 look at your personality.

17 And neuropsychological testing is -- is a -- a test of how
18 your brain functions. It can only test certain parts of your
19 brain. Can't test all of your brain, but it really is a test
20 of how certain aspects of your brain function.

21 And I -- I wanted to get this testing because, first of
22 all, I wanted another clinician to look at Mr. Grant and to
23 see if he saw -- she saw the types of symptoms that I saw but
24 also to determine what severity were those symptoms because of
25 the differential diagnosis that I was entertaining when I saw

1 Mr. Grant.

2 Mr. Grant presented to me with a number of symptoms of a
3 mood disorder. He presented with pressured speech. He
4 presented with grandiosity. He had an unusual set of beliefs.
5 Not only about the Internal Revenue Service but also about
6 other things that were going on in the world, about certain
7 electromagnetic fields that were impacting the world, about
8 certain dietary problems that the world was facing, certainly
9 the issue about the Internal Revenue Service and the
10 requirement that he pay taxes.

11 Mr. Grant also described a family history of significant
12 migraine headaches in his mother, his brother, and in himself
13 and his headaches had been there all his life. He described
14 his brother as being -- having a history of manic depression,
15 manic depression is term that has been replaced by bipolar
16 disorder.

17 He described -- Actually when I asked him about his sleep,
18 he said that sleep was a fantasy to him; that is, he rarely
19 slept for more than an hour or two hours a day but that he
20 didn't need much sleep, that he was able to do pretty well
21 with very little sleep.

22 Mr. Grant uses no drugs, drinks no alcohol, has never used
23 drugs, has never been a drinker.

24 So as Mr. Grant described these behaviors, particularly as
25 it related to his family, a family history of migraines, we

1 know now that about 30 percent of people that have significant
2 mood disorder, particularly bipolar disorder, have a history
3 of migraine disease.

4 As we -- As he talked about his brother having a history
5 of what -- of manic depression, I was able to review and
6 interview with his brother that was completed by the
7 Internal Revenue Service and that interview noted -- his
8 brother noted that he had -- that Randall Grant --

9 **MR. KLUGE:** Objection, your Honor. Calls for
10 hearsay.

11 **THE COURT:** Yes, it does seem like this --

12 **MR. COHAN:** Well --

13 **THE COURT:** -- narrative that you're allowing him to
14 go on has included a number of hearsay statements that
15 wouldn't come in under the exception that would allow
16 Mr. Grant's statements to come in.

17 So do you have another exception that might apply?

18 **MR. COHAN:** Yes. The expert's are routinely allowed
19 to rely on hearsay, and the doctor is simply explaining the
20 basis for his evaluating a condition that Randall Grant was
21 afflicted with, and we have the statement which I provided the
22 doctor, to assist in his diagnosis and understanding family
23 history.

24 **THE COURT:** Sure. He can rely on hearsay in forming
25 his opinion and coming up with his report. But what permits

1 the admissibility? What particular exception would permit the
2 admissibility of any hearsay statement to come in through this
3 witness?

4 **MR. COHAN:** Well, it's just the foundation for his
5 conclusion. Whether it's true or not is for the jury to
6 evaluate.

7 **THE COURT:** All right. So you're not offering it for
8 the truth of the matter?

9 **MR. COHAN:** No, it's based upon an assumption that
10 the statement was correct, and that's the basis for his
11 conclusion with respect to the Prozac. But we had the -- we
12 had that evidence from the government, and so it is offered
13 for the truth insofar as -- as it's a foundation for
14 Dr. Woods' conclusions in part about Randall, also statements
15 made to him by Rick Grant and the other statements that he
16 testified about.

17 Since -- Unless he was present in court had listened to
18 the statements themselves, he wouldn't have a basis except for
19 hearsay. All the tests are hearsay. So it's routinely
20 permitted that experts are allowed to relied on hearsay.

21 **THE COURT:** Of course, it is. And he certainly may
22 testify as to the statements made by Mr. Grant to him.
23 What -- because there is an exception to the hearsay rule for
24 that.

25 What would permit him to testify in court about statements

1 made by other people to other people? Not even to him? I
2 mean, it's double hearsay in that sense.

3 **MR. COHAN:** Your Honor, I guess it's just offered on
4 the basis that it has indicia of reliability because we have
5 the statement that was made by Randall Grant in the memorandum
6 of interview from Agent Moran where the government prosecutors
7 were present. So there's really no dispute that the man
8 made --

9 **THE COURT:** That's not -- That's not in evidence.

10 **MR. COHAN:** There was testimony about it.

11 **THE COURT:** I think that you've gone a little bit
12 further than I'm going to be willing to permit you to go on
13 this, so I'm not going to allow the double hearsay about --

14 **MR. COHAN:** Very well.

15 **THE COURT:** -- brother told someone else.

16 **MR. COHAN:** Very well.

17 **Q.** I'm going to ask you to assume this fact and ask you a
18 hypothetical, then: Assume that a person is taking Prozac for
19 ten years and has been at least diagnosed or believes he's
20 diagnosed as manic depressive.

21 What can you tell us about what condition that person is
22 likely to be suffering from and what bearing does it have on a
23 brother?

24 **MR. KLUGE:** I'm going to object, Your Honor. That's
25 argumentative and not a proper hypothetical. I mean, counsel

1 is just attempting to put in his arguments into a hypothetical
2 question.

3 **THE COURT:** We -- We all know what he's doing, but
4 it's a hypothetical question. This person -- Well, you
5 haven't offered him as an expert. I assume at some point you
6 are going to offer him as a expert.

7 **MR. COHAN:** I forgot. I got so absorbed. Let me ask
8 right now.

9 I move to admit Dr. Woods as an expert to provide expert
10 testimony as a neuropsychiatrist in this case, Your Honor.

11 **THE COURT:** Is there an objection other than what you
12 stated in your pretrial motions?

13 **MR. KLUGE:** That's the only objection the government
14 still maintains, Your Honor.

15 **THE COURT:** All right. Overruled. He is qualified
16 to testify.

17 **MR. COHAN:** My apologies, Your Honor. I forgot that
18 step.

19 **Q.** So let me go back. Now that you have been qualified as an
20 expert, you are allowed to state the basis for opinions that
21 you have about relevant matters within your field of
22 expertise.

23 So I want to ask you about the situation involving the use
24 of Prozac for a ten-year period. What is Prozac, first of
25 all?

1 **A.** Prozac is an antidepressant. It's a selective serotonin
2 reuptake inhibitor, which is just a type of antidepressant.

3 **Q.** And what does -- what does it mean to say selective
4 serotonin reuptake inhibitor in terms of brain function?

5 Can you explain that to lay people?

6 **A.** Yes. May I -- Your Honor, may I step down for a minute
7 and use the -- use the white board?

8 **THE COURT:** Yes.

9 **THE WITNESS:** Thank you.

10 **MR. COHAN:** And may I approach to adjust the
11 microphone for him, Your Honor?

12 **THE COURT:** Sure.

13 **MR. COHAN:** Thank you.

14 **BY MR. COHAN:**

15 **Q.** As we discussed, Doctor, you're going to have to
16 project --

17 **A.** Project.

18 **Q.** -- your voice so the court reporter can hear you. And I'm
19 trying to adjust so the court can see and the jury can see.

20 My apologies for wandering the courtroom, Your Honor.

21 (Simultaneous colloquy.)

22 **THE WITNESS:** Is that loud enough?

23 Is that loud enough?

24 Okay. All right. So when we talk about antidepressants,
25 and we particularly talk about reuptake inhibitors, it kind of

1 makes sense. What the antidepressants are doing are blocking
2 something so that something else could be made larger.

3 And so (indicating) if you think of -- and I apologize. I
4 got an "A" in doctor writing, so my writing is terrible.
5 And -- But I'll try to do as -- this as quickly as I can
6 (drawing).

7 These are synapses --

8 (Off-the-record discussion.)

9 **THE WITNESS:** These are synapses.

10 **BY MR. COHAN:**

11 **Q.** The record should reflect that the doctor is at the white
12 board, and he has drawn a diagram that he's explaining.

13 Please proceed, Doctor.

14 **A.** And those are the connections between your nerves.

15 (Off-the-record discussion.)

16 **THE WITNESS:** I can see this isn't going to work.

17 I'm sorry.

18 **MR. KLUGE:** Your Honor, we're going to object at this
19 point in time about the testimony regarding depression.

20 There's no testimony or issue with respect to the defendant
21 suffering from depression, so I don't really see how this is
22 relevant to the matters in this case.

23 **THE COURT:** Yeah, I'm not sure either. We started
24 with a hypothetical, and then you sort of dropped that, and --
25 but I'm not even sure what the relationship is.

1 There's not been any evidence about ten years of Prozac
2 use. I did not permit the testimony with regard to Randall
3 Grant, so I'm not exactly sure what the hypothetical is based
4 upon or what -- what you're doing by pursuing this line.

5 So you need to establish the relevance to Mr. Grant.

6 **MR. COHAN:** Very well.

7 **Q.** Let's go back, Dr. Woods, to discussing Richard Grant.

8 **A.** Sure.

9 **Q.** Okay. So in evaluating Mr. Grant, was it important for
10 you to try and determine as much as you could about his family
11 history?

12 **A.** Yes.

13 **Q.** And what did you determine about Mr. Grant's family
14 history that was relevant to the condition that you diagnosed
15 him with?

16 **A.** Mr. Grant described to me a family history of migraine
17 headaches. He also described to me a history of -- in his
18 brother of manic depressive disorder, which is a disorder that
19 has both depression and mania. It has two poles. That's why
20 now it's called bipolar disorder. There's a depressive pole,
21 but there's also the manic pole, which is the agitated
22 elevated irritable pole.

23 **Q.** Now, you -- in your report when you describe the history
24 of present circumstances, you evaluated some writings that
25 were signed by Mr. Grant.

1 Do you recall that?

2 **A.** Yes.

3 **Q.** And what about those writings was remarkable in terms of
4 it -- any relationship it might have to the defendant's mental
5 condition that would be inconsistent with specific intent in
6 this case?

7 **MR. KLUGE:** Objection, Your Honor. That calls for a
8 answer that violates Rule 704. He's asking the witness to
9 state an opinion that's the ultimate issue in the case that's
10 for the jury to decide.

11 **THE COURT:** Yes, Mr. Cohan.

12 **MR. COHAN:** No, I did not.

13 **THE COURT:** We talked about this before, before
14 trial. He may not offer an opinion on the question that the
15 jury will be required to make a determination about.

16 **MR. COHAN:** I intended the question to be whether he
17 saw evidence inconsistent with specific intent. And that, I
18 believe, is the whole purpose for which he's been offered as
19 an expert, Your Honor. He's not opining on the ultimate
20 issue.

21 **THE COURT:** All right. Just make sure that the
22 question is not designed to elicit testimony on the ultimate
23 issue as to willfulness and that is with respect to
24 Mr. Grant's intent. That's a jury question.

25 **MR. COHAN:** I understand that. This witness is being

1 offered to testify about evidence inconsistent with that,
2 which the jury will have to weigh and determine to decide
3 whether the evidence establishes that Mr. Grant did or did not
4 have that specific intent.

5 But this witness is offering evidence to show that --
6 evidence that's inconsistent with that specific intent, your
7 Honor.

8 **THE COURT:** I'm not sure that there's a real
9 distinction. I'll have to do that on a question-by-question
10 basis.

11 I'm not so sure that arguing that -- that offering
12 evidence that is inconsistent is not the same thing as arguing
13 simply the flip of the coin, that he didn't have the intent
14 that's required.

15 **MR. COHAN:** We briefed this --

16 **THE COURT:** Extensively, and I told you where the
17 line was. The line's at Rule 704. And you understand that
18 Rule 704 prohibits an expert from opining on the ultimate
19 issue of the mental state necessary.

20 **MR. COHAN:** I do. I do.

21 **THE COURT:** Okay.

22 **MR. COHAN:** But the whole point of his testimony is
23 to explain and describe the evidence that -- inconsistent.
24 Otherwise, it wouldn't be relevant.

25 **THE COURT:** Ask the question, and I'll make a

1 determination on a question-by-question basis.

2 **MR. COHAN:** Very well, Your Honor.

3 **Q.** Did you look at documentation concerning Mr. Grant's
4 communications or documents signed by Mr. Grant that were
5 communications between him and the Internal Revenue Service?

6 **A.** I did.

7 **Q.** And what, if anything, did you notice about the content of
8 those communications relevant to Mr. Grant's mental illness or
9 lack thereof?

10 **A.** The documents appear to follow a consistent pattern of
11 using the same language, of using the same phraseology, of
12 having a certain level of both irritability and grandiosity
13 that would have been consistent with Mr. Grant's -- with
14 symptoms of Mr. Grant -- Mr. Grant's disorder.

15 **Q.** Now, you rendered an opinion on the first question, and
16 that first question was, can you determine to a reasonable
17 degree of scientific -- that is to say neuropsychiatric
18 certainty whether during the period of at least 2004 to the
19 present Richard Grant suffered or still suffers from a mental
20 disease, defect, or condition that has affected his ability to
21 understand his legal duty to file individual income tax
22 returns and to pay income taxes.

23 So all my questions hence forward are designed to elicit
24 the basis for your opinion in responding to that question.

25 Okay?

1 **A.** Yes.

2 **MR. KLUGE:** Objection, Your Honor. Again, that
3 violates Rule 704. He's asking for an opinion that is the
4 ultimate issue in this case that is for the jury to decide,
5 not for Dr. Woods to opine.

6 **THE COURT:** Okay. He hasn't now. He's just
7 explained to the doctor what his questions are designed for,
8 so I still have to do it on a question-by-question basis.

9 **MR. KLUGE:** Very well, Your Honor.

10 **MR. COHAN:** Your Honor, please, this evidence is
11 offered really to establish whether Mr. Grant suffered from a
12 mental disease, defect, or condition that affected his
13 ability.

14 The mere fact that it affected his ability to understand
15 does not prove that he did not understand. It merely
16 establishes that he might not have been able to understand, as
17 a normal person was, who didn't suffer from a mental disease
18 or defect. That's the purpose for psychiatric testimony as I
19 understand it.

20 I'm doing my best to provide it.

21 **THE COURT:** I understand.

22 **MR. COHAN:** Okay.

23 **THE COURT:** I'll have to listen to each question.

24 **MR. COHAN:** Understood.

25 **Q.** So, Dr. Woods, you -- you looked at these communications.

1 Did you eventually find out that Mr. Grant had not actually
2 drafted these communications but had merely signed these
3 documents?

4 **A.** Yes, I did.

5 **Q.** And how, if at all, does that affect your analysis of the
6 existence or not of a mental disease or defect that you've
7 already opined, namely --

8 Well, I should ask you. What specifically was your
9 diagnosis of Mr. Grant?

10 **A.** I have a differential diagnosis of Mr. Grant.
11 Differential diagnosis is bipolar disorder versus temporal
12 lobe dysfunction or temporal lobe epilepsy.

13 **Q.** And what is the basis for your opinion that Mr. Grant is
14 bipolar and/or suffers from temporal lobe epilepsy.

15 First of all, can you tell the jury in as much detail that
16 applies to Mr. Grant, what is the bipolar disorder? What are
17 the symptoms, and what do you believe are the causes?

18 **A.** Bipolar disorder is a disruption of mood. In the most
19 common way of us thinking about it, bipolar, it's a person
20 that has both depression and elevated symptoms. We often
21 think of the elevations, the mania, as being grandiosity but
22 it also can be irritability, and it can be reflected by going
23 back and forth between the depressive symptoms and the more
24 elevated symptoms.

25 Bipolar disorder occurs along a spectrum. There are

1 people that stay in the upper poles their entire life. There
2 are people that stay in the depressive poles their entire
3 life. There are people that have both poles at the same time.
4 So it's a very complex disease.

5 And bipolar disorder can also define people that can
6 function very well, very well with bipolar disorder. There
7 are other people that it's devastating.

8 So bipolar disorder is really manifested by impaired
9 judgment. You see people that have bipolar disorder as often
10 having real vulnerability, real impaired judgment. They can
11 often make financial decisions or personal decisions that are
12 destructive. And -- And have significant denial around these
13 issues. So that's a bipolar disorder.

14 Temporal lobe disorder is very much like bipolar disorder.
15 Temporal lobe disorder is a disorder of the brain of the
16 temporal lobe, and if I could possibly -- this is -- if I
17 could possibly get a --

18 **MR. COHAN:** Yes, we'll see if we can project the
19 computer image of the brain that you wanted us to.

20 **THE WITNESS:** Right.

21 **MR. COHAN:** Would you bear with us for a moment, Your
22 Honor?

23 (Pause in the proceedings.)

24 **BY MR. COHAN:**

25 **Q.** In your statements, Doctor, about bipolar disorder and

1 temporal lobe epilepsy, were these statements about a
2 condition that you believe you identified with sufficient
3 neuropsychiatric certainty to be something with which
4 Mr. Grant is afflicted?

5 **A.** Yes.

6 **Q.** Okay. Please proceed to explain, if you will.

7 (Demonstrative published.)

8 **THE WITNESS:** This is obviously a picture of the
9 brain. Just so we orient ourselves, this is the frontal lobe.
10 These are the -- this is the parietal lobe. This is the left
11 side of the brain. This is the occipital lobe. And this is
12 the temporal lobe. And there's one on both sides of the body
13 (indicating).

14 The temporal lobe is the only lobe in the brain in which
15 all pathways go through, language, motor, thinking, emotion.
16 It's a fascinating and --

17 Mr. Cohan, could you please turn it and -- so I --

18 (Demonstrative published.)

19 **THE WITNESS:** And flip it up for me, please.

20 (Demonstrative published.)

21 **BY MR. COHAN:**

22 **Q.** Now, is that the front of the brain you're on?

23 **A.** This is the front of the brain. This part here is the
24 front of the brain.

25 **Q.** So that's the frontal lobe?

1 **A.** This is the bottom of the frontal lobe. This is -- This
2 is -- if you are laying down and looking up at the brain.

3 **Q.** Please proceed.

4 **A.** And the purple areas -- the purple areas are the temporal
5 lobe.

6 Now, the temporal lobe, as you can see, connects with all
7 of these other areas. It really are (sic) the highways
8 between the frontal lobe and the occipital lobes where we see.
9 It's the highway between the temporal lobe and this -- this is
10 the old brain, the part of the brain we're born with, the part
11 of the brain that allows you to weigh and deliberate, to
12 sequence one's behavior.

13 And when we think about temporal lobe dysfunction or
14 temp- -- what's also called temporal lobe epilepsy, it's most
15 common in this part of the brain, this inner -- what we called
16 the mesial or middle part of the brain. And right in here,
17 you see symptoms that are very, very similar to bipolar
18 disorder (indicating).

19 So if someone has temporal lobe syndrome, they may have
20 magical thinking. They may believe things that other of us --
21 well, we probably aren't sure that's true. They may have
22 obsessive-compulsive disorder. They may have a rigidity in
23 their thinking. This is something that Mr. Grant described to
24 me and was described in other situations as well.

25 They may have grandiosity. Mr. Grant described his

1 beliefs as unique to him, as beliefs that set him apart, that
2 really -- things that he knew that nobody else knew.

3 Q. Is that grandiosity, Doctor?

4 A. That is -- That is grandiosity.

5 Q. Okay.

6 A. As I noted, Mr. Grant had multiple areas of magical
7 thinking completely separate from the Internal Revenue
8 Service. He believed that there were electromagnetic forces
9 that were going to impact the -- the earth.

10 He believed that there were special things -- in diet that
11 were greater than even the kind of things that we normally --
12 so the differential was, well, is this a bipolar disorder? Or
13 is this a temporal lobe disorder?

14 The reason why the question of temporal lobe come up --
15 came up is because this is where -- this mesial area, either
16 on the right or left side is where people that have
17 migraines -- the kind of migraines he described without an
18 aura that are often ongoing, this is where they occur.

19 Also because he has obsessive qualities, and temporal lobe
20 epilepsy often reflects obsessive qualities rather than -- as
21 opposed to bipolar disorder which typically does not have
22 those obsessive qualities, it became a differential diagnosis.

23 Now, Mr. Cohan, would you just drop that down to the
24 regular viewing again.

25 (Demonstrative published.)

1 **THE WITNESS:** And over to the --

2 (Demonstrative published.)

3 **THE WITNESS:** Now, the differential between bipolar
4 disorder and temporal lobe disorder is really clinical because
5 both of them are treated basically in the same way.

6 In bipolar disorder today, if you use medications, the
7 first line medications are anti-seizure medicines, Depakote,
8 Tegretol. Lithium is not -- or Lamictal, l-i-m-i-c-t-a-l
9 (sic), all three of these are anti-seizure medicines that are
10 used both for temporal lobe disorder but are also used for
11 bipolar disorder.

12 The only other medicine that doesn't -- isn't used for
13 both is Lithium. Lithium is really only used for bipolar
14 disorder.

15 So Mr. Grant present -- presented with pressured speech.
16 He presented with grandiosity. He presented with unusual
17 thinking in more than one area. He presented with ob- --
18 obsessive qualities. He presented with impaired sleep,
19 another sign of bipolar disorder. He presented with impaired
20 sleep. He presented with migraine headaches. And he
21 described a family history of migraine headaches.

22 He described a family history, at least in his brother, of
23 manic depressive disorder, which is bipolar disorder. So
24 that's what created the symptoms. And clearly, the fact that
25 we're here, Mr. Grant demonstrated impaired judgment, which is

1 a big sign that you often see in bipolar disorder.

2 There was one other aspects of -- of making the diagnosis
3 that is very important.

4 All psychiatric disorders occur along a spectrum. And
5 it's just been since the advent of psychiatric medications,
6 anti-psychotics particularly, that we assume that anyone that
7 has a psychiatric disorder is on medication. That's not true.
8 All right.

9 Actually a -- the great number of people that have
10 spectrums of psychiatric disorders are, in fact, not on
11 medication. They may have symptoms, but they may function
12 reasonably well in other areas.

13 And so I had to look at how does Mr. Grant function within
14 his culture. And this is where the interview with his wife
15 became very important.

16 His wife, who is like --

17 **MR. KLUGE:** Your Honor, I'm going to object at this
18 point. It's getting quite long. I'm not sure I remember what
19 the question is, but I also think it's starting to elicit some
20 hearsay statements well.

21 **THE COURT:** All right.

22 **MR. COHAN:** Well --

23 **THE COURT:** He's been testifying in a narrative. You
24 do need to exercise some --

25 **MR. COHAN:** Very well.

(Simultaneous colloquy.)

MR. COHAN: Certainly.

Q. So let me ask you about some of the symptoms that you talked about. You mentioned something called pressured speech.

A. Yes.

Q. What is pressured speech?

A. Pressured speech is a speech that requires you to break in. It isn't necessarily rapid speech, although it can be. It's a speech that has a certain urgency that requires you to say, okay. Okay. Hold on a minute. And so pressured speech is a speech that continues, it continues, and continues, that requires you to break in.

Pressured speech is specific to bipolar disorder and temporal lobe disorder. There are many other types of speech and language disruptions in psychiatric disorder, but pressured speech is specific to bipolar disorder.

Q. Now, did you learn that Mr. Grant tended to talk to people about his political beliefs and other odd beliefs even though they clearly didn't want to listen to it?

A. Yes.

Q. And does that -- is that a symptom of pressured speech or otherwise related to one or more symptoms of this disorder?

A. Not necessarily. And this is -- And this is where you have to really make the differentiation because there are a

1 lot of folks that say things to you you may not want to hear,
2 and particularly if you don't necessarily agree with their
3 political stance or whatever may be.

4 However, that's why it was important to interview his
5 wife. Mrs. Grant is a very conservative -- politically
6 conservative woman. They been married for many, many years.
7 And when I asked her about some of the symptoms that Mr. Grant
8 manifested, she talked about how their life had become
9 increasingly isolated because he could not --

10 **MR. KLUGE:** Your Honor, we're going to object at this
11 point in time 'cause, again, it calls for hearsay.

12 **MR. COHAN:** That's the basis --

13 **THE COURT:** It does.

14 **MR. COHAN:** -- in part for his opinion.

15 **THE COURT:** It does call for hearsay, but this
16 appears to me to not go so much as to the truth of the matter
17 but as to how and why he formed the diagnosis that he formed.

18 **MR. COHAN:** That's the basis for all my questions,
19 Your Honor.

20 **THE COURT:** Okay. All right. I'm going to permit
21 this.

22 **THE WITNESS:** Thank you, Your Honor.

23 So -- So in talking with Ms. Grant, who, as I said, is
24 very conservative person herself, acknowledged how their life
25 had become increasingly isolated because Mr. Grant would talk

1 one or another of his unusual thinking regardless of the
2 situation. She had had to move away from friends. She had to
3 kind of change their life. And this is someone that
4 completely believes his conservative beliefs.

5 So this was greater than conservatism. This was greater
6 than a political stance.

7 She also acknowledged that he had -- he did not sleep. He
8 was someone that was not a sleeper, that he only slept -- they
9 been married, as I said, many, many years, at least two
10 decades, maybe three. He was not a sleeper.

11 And, again, sleep disruption, difficulty sleeping is,
12 again, a sign of bipolar disorder. So she acknowledged the
13 pressured speech. She acknowledged the unusual thinking. She
14 acknowledged the obsessive-compulsive qualities. She
15 described him as a hoarder.

16 **BY MR. COHAN:**

17 **Q.** Did you say "a hoarder"?

18 **A.** As a hoarder.

19 **Q.** And what is that, Your Honor? Excuse me.

20 What is that, Doctor?

21 **A.** You may or may not see this show on television called
22 "Hoarding." Hoarding is one subtype of obsessive-compulsive
23 disorder. Obsessive-compulsive disorder is -- obsession is
24 the thought; compulsion is the action.

25 Hoarding is one type of obsessive-compulsive disorder, and

1 you see OCD -- if you don't mind me summarize (sic) -- you see
2 obsessive-compulsive disorder or OCD often in mood disorders,
3 in bipolar disorder as well.

4 You can see it separately. It can -- It could be a
5 separate diagnosis. About 30 percent of people that have
6 bipolar disorder, about 17 percent of people that have
7 temporal lobe disorder also have obsessive qualities.

8 So what -- what I saw in my interviews with Mr. Grant were
9 reinforced by his wife, and we did not talk about psychiatric
10 diagnoses. She had no reason to talk about these specific
11 symptoms at the time that -- that I interviewed her.

12 And so what I saw then was what you really want to look at
13 when you're talking about a psychiatric disorder. Many people
14 may have traits. They may have things that they do.

15 **MR. KLUGE:** I'm going to object, Your Honor. This is
16 moving to a very lengthy narrative.

17 **THE COURT:** The last question was, what is a hoarder.

18 **THE WITNESS:** Okay. I'm sorry.

19 **THE COURT:** And witness is going on --

20 **MR. COHAN:** I understand. I hesitated to interrupt.

21 **THE COURT:** I'm not going to permit any more
22 narratives. Ask specific questions.

23 **MR. COHAN:** Very well, Your Honor.

24 **Q.** So you also mentioned, Doctor, obsessive behavior.

25 Did you learn anything about Mr. Grant's ownership of a

1 couple of airplanes?

2 **A.** Yes.

3 **Q.** What did you learn about Mr. Grant's ownership of
4 airplanes, if anything, that sounded in obsession of one sort
5 or another?

6 **A.** Mr. Grant owned two airplanes. He owned those airplanes.
7 They were hydroplanes -- actually planes that were designed to
8 go in the waters. He had owned them along with his brother
9 for decades. Neither one of them currently flew, although I
10 believe one flew in 2007.

11 He is storing parts, both the airplanes and the parts at a
12 cost of about \$2,000 a month. There's no indication that
13 either of these planes would ever fly again.

14 **Q.** So the fact that he owns these two airplanes that don't
15 fly and stores airport -- airplane parts and has been involved
16 in this activity for decades, does that support in any form or
17 fashion an obsessive-compulsive-type disorder?

18 **MR. KLUGE:** Objection, Your Honor. It's leading.

19 **THE COURT:** Overruled. I'll allow it.

20 **THE WITNESS:** Yes.

21 **BY MR. COHAN:**

22 **Q.** I want to make sure that you've covered all of the
23 symptoms that you've identified supporting the diagnosis that
24 I believe you've given us. But I want to make sure that now
25 that I've got around to qualifying you as an expert because

1 the court prompted me to, do you have an opinion to a
2 reasonable degree of scientific neuropsychiatric certainty
3 whether during the period of 2004 to the present,
4 Richard Grant suffered and still suffers from mental disease,
5 defect, or condition that affected his ability to understand
6 his legal duty to file income tax returns and to pay income
7 taxes?

8 **MR. KLUGE:** Objection, Your Honor. The last part of
9 Mr. Cohan's question violates Rule 704(b). He can ask him --
10 Dr. Woods if he suffers from a mental condition. But he
11 specifically inserts in there a phrase that his mental
12 condition specifically affected his mental state with respect
13 to the charges. That violates Rule 704.

14 **THE COURT:** Well, the issue is under the *Cohen* case
15 is whether or not the -- it necessarily -- whether or not his
16 testimony would necessarily compel a conclusion that the
17 mental state was -- that the defendant did not labor under
18 that mental state. I'm not sure that that question goes quite
19 that far.

20 **MR. COHAN:** It does not, Your Honor.

21 **THE COURT:** Yeah, I -- I think it's okay.

22 **MR. COHAN:** Thank you.

23 **Q.** You may answer the question if you still recall it.

24 **A.** I'd like it one more time if you don't mind.

25 **Q.** Okay. I'm asking for you to tell us whether you have an

1 opinion that you can state with a reasonable degree of
2 neuropsychiatric certainty whether during the period of 2004
3 to the present, Richard Grant suffered and still suffers from
4 a mental disease, defect, or condition that affected his
5 ability to understand his legal duty to file individual tax
6 returns and to pay income taxes?

7 **A.** I do. I forgot the symptom of memory, but I do.

8 **Q.** Ah. Memory.

9 Did you identify in the course of gathering evidence about
10 Mr. Grant any memory deficit that he may suffer from?

11 **A.** Yes.

12 **Q.** And is it the case that when people reach the age of 65,
13 they started losing memory function, knowing that Mr. Grant's
14 only 63?

15 **A.** It depends upon the type of memory function. There are
16 about -- about 17 different types of memory. The type of
17 memory function that you lose starting about 60 is for proper
18 names. But in terms of the kinds of memory that we're talking
19 about, no.

20 **MR. KLUGE:** Your Honor, I'm going to object to this
21 line of questioning and that answer.

22 What's relevant in this case is what Mr. Grant's mental
23 state was from 2004 through 2009. It was not over 65. And so
24 testimony about memory issues that affect people once they're
25 over 65 is not relevant to the issues in this particular case.

1 **THE COURT:** Sustained.

2 **BY MR. COHAN:**

3 **Q.** Doctor, did you understand the question to be limited to
4 people over the age of 65?

5 **A.** No.

6 **Q.** Okay. Well, let me ask it again without that limitation.

7 Is there a progressive loss of memory, generally speaking,
8 in the human population?

9 **A.** Yes.

10 **Q.** Did you determine whether Mr. Grant's memory issues were
11 such that he had problems that were different or greater than
12 what we would call a normal person's memory loss for the same
13 age?

14 **MR. KLUGE:** Objection again on the basis of
15 relevance. If he wants to ask about memory issues from 2005
16 through 2009, that would be relevant. Whether or not
17 Mr. Grant suffers today at his present age memory loss is not
18 relevant to whether or not his conduct was willful.

19 **THE COURT:** Sustained.

20 **BY MR. COHAN:**

21 **Q.** Can you infer from someone's current condition what their
22 condition would have been during prior years?

23 **A.** It depends upon the condition. In terms of memory, I
24 could not.

25 **Q.** In -- In Mr. Grant's case, could you determine -- I

1 believe you just testified that you were able to determine
2 with a reasonable degree of scientific certainty whether
3 Mr. Grant was suffering from mental disease, defect, or
4 condition that affected his ability to understand his legal
5 duty to file income tax returns and to pay income taxes.

6 Can you state with a reasonable degree of certainty that
7 Mr. Grant suffered from such a condition as early as 2004
8 based on evaluating him in 2015?

9 **A.** Yes.

10 **Q.** Were you able to determine that he was manifesting these
11 same symptoms by interviewing people and looking at the
12 material that you were provided with from 2004 and perhaps
13 even earlier?

14 **A.** Every symptom but memory.

15 **Q.** Okay. So can you determine with a reasonable degree of
16 scientific certainty whether the memory deficit onset was at
17 or about 2004, 2005? Or can you not do that?

18 **A.** It's not clear to me.

19 **Q.** Okay.

20 Now, the second question that you were asked to respond
21 to, again, whether you could state with a reasonable degree of
22 neuropsychiatric certainty was does this mental disease,
23 defect, or condition increase Richard Grant's gullibility
24 concerning promoters of schemes to, quote, legally, end quote,
25 avoid income taxes?

1 **MR. KLUGE:** Objection again, Your Honor. Calls for
2 an answer that violates Rule 704(b).

3 **THE COURT:** I think it does as well.

4 **MR. COHAN:** I'm only asking whether it increases his
5 gullibility. It's not the ultimate issue. Even if it does
6 increase his gullibility, it doesn't mean that he doesn't
7 possess the requisite mental state. It merely shows that it
8 affected. The nature and extent of that effect is for the
9 jury to determine.

10 **THE COURT:** Counsel, response?

11 **MR. KLUGE:** If Mr. Cohan wants to ask -- Dr. Woods
12 found that Mr. Grant suffered from symptom of gullibility,
13 period, I think that would be sufficient. But when he throws
14 on to the end of his question if raised --

15 (Off-the-record discussion.)

16 **MR. KLUGE:** -- end of his question when he tacks on a
17 clause that necessarily invades the province of the jury, that
18 renders the question violative of Rule 704(b).

19 **MR. COHAN:** Your Honor, it does not. And it would be
20 irrelevant unless it affected --

21 **THE COURT:** It does.

22 **MR. COHAN:** -- his ability to understand his legal
23 duty. That's what makes this whole line of inquiry relevant.

24 **THE COURT:** All right. I'm going to instruct the
25 jury that ultimately, you will be the finders of fact as to

1 whether or not the defendant did or did not have the requisite
2 mental state, which in this case, is willfulness.

3 I'm going to allow this question though because I think
4 that to the extent that there was any affect at all by virtue
5 of the diagnosed mental condition, that that is relevant to
6 the question that you will ultimately -- you would ultimately
7 be required to find, so I will permit it.

8 **MR. COHAN:** Thank you, Your Honor.

9 **Q.** So the question was whether you can state with a
10 reasonable degree of neuropsychiatric certainty whether the
11 mental disease, defect, or condition that you diagnosed for
12 Richard Grant increased his gullibility concerning promoters
13 of schemes to legally avoid income taxes?

14 Did it?

15 **A.** In my professional opinion, yes.

16 **Q.** And can you state that with a reasonable degree of
17 neuropsychiatric certainty?

18 **A.** Yes.

19 **Q.** And can you state for the jury the materials that you
20 relied upon evaluating specifically what Mr. Grant did
21 vis-a-vis his taxes including his filings with the IRS, with
22 the tax court, with the Court of Appeals, his involvement with
23 various promoters and the rest of his behavior?

24 **MR. KLUGE:** Objection. It's argumentative. It's
25 compound, vague. And I'm not sure I understand the question.

1 **THE COURT:** I -- I agree. Sustained. Rephrase it,
2 please.

3 **MR. COHAN:** Very well.

4 **Q.** Let's take look at -- unless you -- we need to go further
5 into your preliminary report -- did you do a second report?

6 **A.** Yes.

7 **Q.** And if I may, I'd like to invite your attention to the
8 second report. When did you do your second report?

9 **A.** I completed it May 16th of 2016.

10 **Q.** So just a month ago today; is that right?

11 **A.** That's correct.

12 **Q.** And why did you do a second report?

13 **A.** I did a second report to, number one, establish my
14 credentials to make this differential diagnosis between
15 bipolar disorder and temporal lobe disorder, and to also
16 expand my discussion of the question of gullibility.

17 **Q.** Now, if I may, I'd invite your attention to page 2 of this
18 rebuttal report.

19 Before we go into it, though, did you receive a report
20 from the government's designated psychiatric expert in this
21 case?

22 **MR. KLUGE:** Objection, Your Honor. What's the
23 relevance? Dr. Woods is here to testify about his medical
24 diagnosis, his opinions. And any other report is not
25 pertinent to what his diagnosis is of Mr. Grant.

1 **THE COURT:** Well, the question was simply did he
2 receive the report, and I don't see reason why he shouldn't
3 testify as to that.

4 He can't testify as to the contents of the report. But he
5 can certainly answer this question. Overruled.

6 **THE WITNESS:** Yes, I did.

7 **BY MR. COHAN:**

8 **Q.** And did you see that the government's expert identified
9 the same symptoms you did?

10 **MR. KLUGE:** Objection then, Your Honor.

11 **THE COURT:** And that objection is based upon...?

12 **MR. KLUGE:** One, it's hearsay. It's not something
13 that's part of his expert testimony. He's here to render
14 opinion as to what his diagnosis is of Mr. Grant. It's not
15 relevant.

16 **THE COURT:** You can stop with hearsay. It's hearsay.
17 Sustained.

18 **BY MR. COHAN:**

19 **Q.** In forming your own opinions, Doctor, do you rely of
20 opinions on other psychological and psychiatric professionals
21 who have also evaluated the same subject?

22 **A.** I certainly review them. I can't say that I rely upon
23 them, but I certainly review them.

24 **Q.** Okay.

25 Now, if I may go back to page 2 of your -- your second

1 report and invite your attention to some -- some experience
2 and training and expertise that I believe you stated was
3 particularly applicable to the situation of gullibility and
4 susceptibility to certain types of ideas.

5 Can you briefly summarize those particular aspects of your
6 training and experience which provide the foundation for your
7 expertise in this area?

8 **MR. KLUGE:** I'm going to object, Your Honor, at this
9 point. It's cumulative. He's already been offered and
10 accepted by the court as an expert.

11 **THE COURT:** Yeah, I'll allow question, but I'm not
12 sure where you're going with it.

13 **MR. COHAN:** I'm going into the details of this
14 witness's particular training and experience with this
15 particular aspect of psychiatric illness, Your Honor.

16 **THE COURT:** Just the gullibility issue.

17 **MR. COHAN:** That's exactly right, Your Honor.

18 **THE COURT:** Okay. All right. He can do it.

19 **THE WITNESS:** I've written about vulnerability and
20 gullibility and intellectual disability and other psychiatric
21 disorders.

22 I think the last paper that I wrote along with Dr. Stephen
23 Greenspan was a paper that was published in Paris in 2015.
24 And I focused on issues of vulnerability and gullibility or
25 risk unawareness for probably the last ten years.

1 **BY MR. COHAN:**

2 **Q.** Now, "risk unawareness" is a term you just used. What, if
3 any, applicability does risk unawareness have to your
4 evaluation and opinion concerning Richard Grant?

5 **A.** Both bipolar disorder and temporal lobe dysfunction
6 undermine the ability of a person to evaluate risk. It
7 impairs judgment. It often impairs insight. In the
8 Diagnostic and Statistical Manual No. 5, which is really a
9 classification system not a comprehensive textbook of
10 psychiatry but a classification system, they talk about
11 financial indiscretions as being one of the factors that one
12 sees in bipolar disorder.

13 Those financial indiscretions or impaired judgment,
14 difficulty effectively weighing and deliberating in specific
15 areas are frequently found in mood disorders, certainly in
16 bipolar disorder.

17 **Q.** And is -- is a colloquial term for gullibility basically a
18 sucker? Somebody who's easily beguiled?

19 **A.** Well, I -- I think of -- I think of it that way when I
20 don't think -- when I'm not thinking clinically.

21 If -- If it were someone that did not have a mental
22 disease or defect, the answer would be yes.

23 If it's someone that does, in fact, have a mental disease
24 or defect, the answer is no because their ability to be -- to
25 judge things effectively are impaired as opposed to the

1 average person.

2 **Q.** Okay.

3 Now, you've identified a number of engagements where you
4 were performing psychiatric services beginning as early as
5 1991 that were specific to the type of expertise required to
6 do the diagnosis of temporal lobe epilepsy as a differential
7 diagnosis with bipolar disorder.

8 Do you recall those experiences being in 1991 and I guess
9 continuing all the way to the present that were particularly
10 focused on the foundation for determining and identifying
11 mental illness related to gullibility?

12 **MR. KLUGE:** Objection again, Your Honor. It's
13 cumulative.

14 **THE COURT:** Yes, it is. But I'm going to permit it.

15 **BY MR. COHAN:**

16 **Q.** So you're not going to allow me to explore this?

17 **THE COURT:** No, I said I'm going to permit it.

18 **MR. COHAN:** I'm sorry.

19 **THE COURT:** It is cumulative, but I am going to
20 permit it. That's what I said.

21 **MR. COHAN:** I apologize. I didn't hear Your Honor.

22 **Q.** Please, if you would, Doctor, can you briefly summarize
23 that experience that is particularly focused on diagnosing
24 neuropsychiatric disorders which contribute to gullibility?

25 **A.** Yes. In the early -- actually, in the very early 1980's,

1 I developed the first medical psychiatric unit at Pacific
2 Medical Center which had -- looked at people that had medical
3 illnesses with psychiatric disorders.

4 From 1990 -- from 1983 to 1990, I worked at Crestwood
5 Manor in Vallejo, California, with seriously ill, hospitalized
6 people, most of whom had cognitive impairments or mood
7 disorders. Very few were schizophrenic and in that seven
8 years, we again looked at the issue of vulnerability and
9 gullibility.

10 Since about 2005, maybe 2008, I have been writing about
11 gullibility and vulnerable as a core factor in mental disease,
12 particularly in intellectual disability, mental retardation,
13 but also in other disorders as well.

14 And it really appears to be because of how the brain
15 works, the breakdown across many psychiatric disorders, but
16 specifically, as it looks at bipolar disorder and temporal
17 lobe disorder.

18 **Q.** Doctor, is the field of neuropsychiatry still evolving, or
19 have we discovered everything?

20 **A.** Oh, it's just starting. Not even close.

21 **Q.** So it's just getting started. As a result of that, are
22 you continuing to do research and work with other people doing
23 research to update each other on your findings?

24 **A.** Yes.

25 **Q.** And is there -- are there courses given by various

1 universities around the world, including here in the United
2 States, to further develop your understanding and expertise
3 that are continuing medical education courses that actually
4 you're required to take for your medical certification?

5 **A.** Yes.

6 **Q.** And have you taken courses of that sort focused on
7 neuropsychiatric disorders including bipolar disorder and
8 temporal lobe epilepsy within the last few years?

9 **A.** Yes, I have.

10 **Q.** And where have you done that, sir?

11 **A.** In 2010, I took a course with the American Psychiatric
12 Association on medical diseases that masquerade as psychiatric
13 diseases and that was put on by Dr. Jose Maldonado from
14 Stanford.

15 In 2013, I believe I took a course at Harvard on
16 neuropsychiatry which also looked at temporal lobe epilepsy.

17 And in 2012, I -- this is a regular course I take -- an
18 update on internal medicine. That was also at Harvard.

19 **Q.** Now -- Excuse me. One second.

20 (Pause in the proceedings.)

21 **BY MR. COHAN:**

22 **Q.** In your second report, you were explaining the difference
23 between ictal symptoms and peri-ictal symptoms as bearing on
24 the diagnosis for Rick Grant that you've testified about that
25 he's diagnosed as bipolar, slash, temporal lobe epilepsy.

1 What does ictal symptoms versus peri-ictal symptoms mean in
2 this case?

3 **A.** Well, actually they don't mean -- I was explaining --
4 Mr. Cohan, I was explaining the fact that when I talked about
5 ictal versus peri-ictal, I was explaining the fact that what
6 we normally think of epilepsy is not what temporal lobe
7 epilepsy is.

8 Temporal lobe epilepsy is an electrical -- is bad
9 electrical wiring. And actually any epilepsy is bad
10 electrical wiring. Temporal lobe epilepsy does not present
11 with physical manifestations. You don't have the typical
12 clonic/tonic movement that one has in like grand mal epilepsy.

13 Temporal lobe epilepsy presents in behavior, so a person
14 may not have what we think as a seizure their entire life.
15 What they have are migraines and odd thinking. So when we
16 talk about temporal lobe epilepsy, don't get the idea -- and
17 that's why I was talking about ictal versus peri-ictal -- that
18 these are not -- "ictal" means at the time of the seizure;
19 "peri-ictal" means around time of the seizure. But that's not
20 really what epilepsy is all about.

21 Epilepsy is all about bad wiring. And bad wiring can
22 occur without any motor functions, can actually present just
23 as behaviors, just as thinking, rather than any motor
24 function.

25 **Q.** When you interviewed Mr. Grant, did you notice anything

1 unusual about his attitude toward this trial and the
2 prosecution that he's facing now?

3 **A.** Yes.

4 **Q.** And what was that?

5 **A.** Certainly in my first two interviews, Mr. Grant, he did
6 not appear to understand the gravity of the circumstances.

7 **Q.** So would you expect somebody to be facing a situation such
8 as criminal prosecution for three counts of tax evasion to be
9 worried and upset as opposed to happy and relaxed?

10 **MR. KLUGE:** Objection, Your Honor. It's leading.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** Well, I -- I would not describe him
13 as -- as happy and relaxed. I would describe him as unaware
14 of the gravity of the circumstances and unaware of -- and
15 increasingly aware of the fact that the resources he'd relied
16 on were inaccurate.

17 **MR. KLUGE:** Going to move to strike the last part --
18 the last part of his question. His answer, Your Honor,
19 invades the province of the jury.

20 **THE COURT:** The clause "unaware" -- "increasingly
21 unaware of the fact that the resources he relied upon were
22 inaccurate"? That portion?

23 **MR. KLUGE:** Yes, Your Honor.

24 **THE COURT:** I don't see that that's much difference
25 than the first part. Request denied.

1 Go ahead.

2 **MR. COHAN:** Your Honor, may I have a moment?

3 **THE COURT:** Um-hmm.

4 (Pause in the proceedings.)

5 **BY MR. COHAN:**

6 **Q.** Before I yield here and allow the government to
7 cross-examine you, I want to make sure that you were able to
8 express a clear answer to the two questions that I asked you
9 to address.

10 So the first question --

11 **THE COURT:** He did.

12 **MR. KLUGE:** Objection, Your Honor. Asked and
13 answered.

14 **THE COURT:** He did. On several occasions.

15 **MR. COHAN:** All right then.

16 **THE COURT:** I wrote them down. Thank you.

17 **MR. COHAN:** Very well. Nothing further.

18 **THE COURT:** All right.

19 All right. Ladies and gentlemen, you'll be excused for 15
20 minutes. And, Dr. Woods, you can take a break as well.

21 **THE WITNESS:** Thank you, Your Honor.

22 (The following proceedings were heard out of the presence
23 of the jury:)

24 **THE COURT:** All right. Counsel, before
25 cross-examination of Dr. Woods, I just want to indicate to you

1 all that the question as to whether or not -- the questions
2 posed by counsel crossed the 704 line -- I mean, that's a --
3 it's definitely a difficult determination to make, but based
4 upon *Cohen* and *Finley*, I believe that Mr. Cohan did ask proper
5 questions that did not compel an answer.

6 And the two questions to the -- the two primary issues
7 that were submitted to the witness were whether or not the
8 mental condition affected the defendant's ability to
9 understand his legal duty and whether or not by virtue of
10 the -- the gullibility that resulted from the mental
11 condition, whether or not his ability to understand his legal
12 duty was affected. I -- I think that those are actually
13 proper.

14 I was a little concerned that it was too close to the
15 line. But in briefly perusing the *Cohen* decision, I think
16 that the jury certainly could accept the witness's testimony
17 and still find that the mental state of willfulness is
18 present.

19 I mean, the fact that it affected it isn't the same thing
20 as saying it precludes his ability to form the state (sic), so
21 I think that Mr. Cohan was correct in the way in which he
22 ultimately framed those questions.

23 So keep that in mind when you're doing your
24 cross-examination.

25 **MR. KLUGE:** Very well.

1 **THE COURT:** Okay.

2 **MR. COHAN:** Thank you, Your Honor.

3 (Recess taken at 10:11 A.M.; proceedings resumed at 10:26
4 A.M.)

5 (The following proceedings were heard in the presence of
6 the jury:)

7 **THE CLERK:** Please be seated and come to order.

8 **THE COURT:** All right. Cross-examination.

9 **MR. KLUGE:** Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. KLUGE:**

12 **Q.** Good morning, Dr. Woods.

13 **A.** Good morning, Mr. Kluge. How are you?

14 **Q.** My name is Matthew Kluge, and I work for Department of
15 Justice, and we've never met prior to this morning; is that
16 correct?

17 **A.** That's correct.

18 **Q.** Okay. But you have previously met Mr. Cohan, correct?

19 **A.** That's correct.

20 **Q.** How long have you known Mr. Cohan?

21 **A.** Oh, perhaps a year? Let's see. When did I first --

22 (Reviewing document.)

23 My first meeting was May of 2015.

24 **Q.** That's the first time you met Mr. Cohan the defense
25 counsel?

1 **A.** Oh, I'm sorry. I apologize. Mr. Grant. I've known
2 Mr. Cohan perhaps three years. Perhaps.

3 **Q.** And Mr. Cohan has referred other clients to you besides
4 Mr. Grant; is that correct?

5 **A.** One.

6 **Q.** So how many times have you been retained by Mr. Cohan?

7 **A.** Once beside -- This is the second time.

8 **Q.** This is the second time; is that correct?

9 **A.** Yes.

10 **Q.** And in that other occasion, you also evaluated a client of
11 Mr. Cohan's; is that correct?

12 **A.** That's correct.

13 **Q.** And you prepared some reports regarding that particular
14 client; is that correct?

15 **A.** That's correct.

16 **Q.** And you were paid for those reports, correct?

17 **A.** Yes.

18 **Q.** Okay.

19 And in addition in that other instance, you testified in a
20 proceeding regarding that other client; is that correct?

21 **A.** Yes.

22 **Q.** And you were paid to testify in that proceeding, correct?

23 **A.** Well, no, I was paid, and I testified. Yes.

24 **Q.** Well, you were paid for the hours that you spent on that
25 particular case, correct?

1 **A.** That's correct.

2 **Q.** And that included the testimony that you provided in that
3 case, correct?

4 **A.** That's correct.

5 **Q.** And in that case, did you charge \$400 an hour?

6 **A.** That's correct.

7 **Q.** And in that case, did you recall working approximately 60
8 hours?

9 **A.** I think at least that.

10 **Q.** At least that?

11 **A.** Yes.

12 **Q.** Okay.

13 So for 60 hours at \$400 an hour, that's approximately
14 \$24,000; is that correct?

15 **A.** Yes.

16 **Q.** How many hours have you billed in this case to date?

17 **A.** I'm not sure. But I would say that it's probably close to
18 that.

19 **Q.** Close to 60 hours?

20 **A.** Yes.

21 **Q.** And what is the rate that you're charging in this
22 particular case?

23 **A.** \$400 an hour.

24 **Q.** So approximately at this point in time, you've charged
25 \$24,000 for the work that you've done relating to Mr. Grant;

1 is that correct?

2 **A.** I would say including today, yes.

3 **Q.** Including today?

4 **A.** Yes.

5 **Q.** And so for your time here today as a witness, you'll
6 charge for that time as well; is that correct?

7 **A.** That's correct.

8 **Q.** Do you charge more for the time that you spend testifying
9 versus the time you spend doing other matters for Mr. Grant?

10 **A.** No, the California Business Code does not allow for
11 that -- to charge differently -- a differential.

12 **Q.** What percentage of your income at the moment comes from
13 your clinical practice versus the work you do consulting for
14 individuals who have been indicted?

15 **A.** Hmm. About 40 percent of my practice is -- my income
16 comes from my clinical practice, and about 60 percent of my
17 income comes from my forensic practice. But it -- that does
18 not include, as you said, persons that have been indicted.

19 I have both a civil practice and a -- and a criminal
20 practice.

21 **Q.** So 60 percent of your time now is spent in doing work that
22 relates to litigation; is that fair to say?

23 **A.** Yes.

24 **Q.** Okay.

25 And how much of your time are (sic) you spent having been

1 retained by defendants in criminal cases?

2 **MR. COHAN:** Object, lack of foundation as to time.
3 You mean, for the last 30 years?

4 **THE COURT:** Sustained.

5 **BY MR. KLUGE:**

6 **Q.** For the last two years, what percentage of your work has
7 been dedicated to providing services for defendants in
8 criminal matters?

9 **A.** I've never been asked to do an evaluation for the
10 government, so in these cases, my -- my work has always been
11 for the defense.

12 **Q.** So you've never been asked to testify or render an opinion
13 by a prosecutorial office; is that correct?

14 **A.** Not in the last 25 years or so.

15 **Q.** So any litigation in the criminal context in which you're
16 testifying is cases in which you're representing (sic) the
17 defendant; is that correct?

18 **A.** That's correct.

19 **MR. COHAN:** Object. He's not representing anyone.

20 **THE COURT:** Sustained. Rephrase.

21 **BY MR. KLUGE:**

22 **Q.** So all the work that you do in a criminal context, the
23 consultation and the diagnosis and testifying, you do on
24 behalf of criminal defendants; is that correct?

25 **A.** I --

1 **MR. COHAN:** Asked and answered.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** I have so far. I testify in about 11
4 percent of the cases that I'm consulted with.

5 **BY MR. KLUGE:**

6 **Q.** Dr. Woods, is it true that you didn't meet Mr. Grant
7 until after he was indicted in this case, correct?

8 **A.** Correct.

9 **Q.** You didn't know Mr. Grant back in 2004?

10 **A.** That's correct.

11 **Q.** Or 2005?

12 **A.** That's correct.

13 **Q.** Or 2006?

14 **A.** Yes.

15 **Q.** Or 2007?

16 **A.** That's correct.

17 **Q.** Or 2008, 2009, correct?

18 **A.** That's correct.

19 **Q.** And you didn't know him in the years prior to 2004,
20 correct?

21 **A.** Yes.

22 **Q.** And, in fact, the first time you met Mr. Grant was May
23 2015; is that correct?

24 **A.** That's correct.

25 **Q.** And that would have been five years after 2009 ended; is

1 that correct?

2 A. Six years.

3 Q. Six years?

4 A. Yeah.

5 Q. Okay. And you only met Mr. Grant for purposes of this
6 particular litigation; is that correct?

7 A. Yes.

8 Q. And you only evaluated Mr. Grant for purposes of this
9 litigation, correct?

10 A. Yes.

11 Q. And you're not treating Mr. Grant; is that correct?

12 A. That's correct.

13 Q. You haven't prescribed Mr. Grant any medication; is that
14 correct?

15 A. That's correct.

16 Q. Your differential diagnosis of Mr. Grant is temporal lobe
17 epilepsy versus bipolar disorder, correct?

18 A. That's correct.

19 Q. And both of these are serious mental conditions; is that
20 correct?

21 A. Yes.

22 Q. And temporal lobe epilepsy is a neurological disorder,
23 correct?

24 A. It is. Yes.

25 Q. Whereas bipolar disorder is a psychiatric disorder,

1 correct?

2 **A.** That's actually not correct. At one time, we thought of
3 bipolar disorder being a purely psychiatric disorder. We now
4 know that it is what we call a neurocognitive disorder. It's
5 got impairments of the brain as well as psychiatric
6 presentations.

7 **Q.** But bipolar disorder appears in the DSM-5, correct?

8 **A.** That's correct.

9 **Q.** Temporal lobe epilepsy does not appear in the DSM-5?

10 **A.** That's correct.

11 **Q.** The DSM-5 is the -- I want to get the name right -- is the
12 Diagnostic and Statistical Manual of Mental Disorders,
13 correct?

14 **A.** That's correct.

15 **Q.** And that is a -- a primary resource for psychiatrists in
16 diagnosing mental disorders; is that correct?

17 **A.** It's a resource of classification, not really of
18 diagnoses. It doesn't have many diagnoses in it, particularly
19 neurological diagnosis.

20 **Q.** Now, you showed some pictures of the brain during your
21 direct examination. Those weren't pictures of Mr. Grant's
22 brain, correct?

23 **A.** That's correct.

24 **Q.** In fact, you didn't take any pictures of Mr. Grant's
25 brain, correct?

1 **A.** Oh, no.

2 **Q.** You did not.

3 **A.** No.

4 **Q.** After meeting Mr. Grant and writing your preliminary
5 report, you didn't prescribe Mr. Cohan any anti-seizure
6 medication, did you?

7 **MR. COHAN:** Your Honor, I object to this line of
8 questioning. He was retained strictly for forensic purposes.
9 He's not the treating psychiatrist. There isn't one.

10 **THE COURT:** That's I think the point counsel is
11 making. Objection overruled.

12 **THE WITNESS:** There are ethical dilemmas between
13 treating someone and also evaluating them in the legal
14 setting. So I would not, in fact, prescribe for someone that
15 I was evaluating in a legal setting.

16 **BY MR. KLUGE:**

17 **Q.** Okay. So you did not prescribe to Mr. Grant any
18 anti-seizure medication?

19 **A.** And would not.

20 **Q.** And you didn't tell Mr. Grant to stop driving a car,
21 correct?

22 **A.** No.

23 **Q.** Now, Dr. Woods, you studied medicine, correct?

24 **A.** Yes.

25 **Q.** And you described your experience and your resume during

1 direct examination. You didn't do a residency in neurology;
2 isn't that correct?

3 **A.** That's correct.

4 **Q.** And you didn't do a fellowship in neurology, correct?

5 **A.** That's correct.

6 **Q.** And you're not a board-certified neurologist; is that
7 correct?

8 **A.** That's correct.

9 **Q.** And the focus of your practice is not on epilepsy; is that
10 correct?

11 **A.** The focus of my practice is not on all types of epilepsy.
12 But certainly one of the focuses -- foci of my practice would
13 be temporal lobe epilepsy because it crosses the border
14 between psychiatry and neurology.

15 **Q.** Didn't you testify previously that the focus of our
16 practice has been ethnopsychopharmacology?

17 **A.** It has been, yes.

18 **Q.** And that a focus of your practice has been
19 neurodevelopmental problems?

20 **A.** That's correct.

21 **Q.** Such as fetal alcohol syndrome?

22 **A.** Yes.

23 **Q.** Now, you prepared a report regarding Dr. (sic) Grant dated
24 September 10th, 2015; is that correct?

25 **A.** Yes.

1 **MR. COHAN:** Mr. Grant is not a doctor.

2 **MR. KLUGE:** I'm sorry.

3 **Q.** Dr. Woods, you prepared a record regarding Mr. Grant dated
4 September 10th, 2015.

5 **A.** Yes.

6 **Q.** Correct?

7 And in your report, it's specifically a preliminary
8 report; is that correct?

9 **A.** Yes.

10 **Q.** And, in fact, on the very first page of your report, in
11 the second paragraph, the sentence begins, "in order to
12 complete the preliminary portion of my examination."

13 Do you recall that?

14 **A.** Yes.

15 **Q.** And if I ask -- and if you -- on the 17th page of your
16 preliminary report, you state, "these findings are preliminary
17 because further testing and consultation is necessary.

18 **A.** That's correct.

19 **Q.** Is that correct?

20 **A.** That's correct.

21 **Q.** And also on page 17, of your report, in the
22 second-to-the-last paragraph, you state, this examination is
23 preliminary and will be completed based upon further
24 neurological and cognitive examinations. Is that correct?

25 **A.** That's correct.

1 Q. Okay. You then prepared a second report that you talked
2 about on your direct examination, and that report is dated May
3 16th, 2016, correct?

4 A. That's correct.

5 Q. And this report is in the format of a -- a letter to
6 Mr. Cohan; is that correct?

7 A. Yes.

8 Q. And this report, the -- the letterhead is the Science
9 Advisors. What's the Science Advisors?

10 A. Science Advisors is a corporation that -- is a corporation
11 of mine.

12 Q. A corporation that you own and operate?

13 A. Yes, with two other people.

14 Q. And what kind of business is the Science Advisors?

15 A. We consult to startup companies and other types of
16 companies that are developing primarily neurological
17 instruments, like -- we work with people developing stuff on
18 concussions or childhood assessments of brain -- brain damage.

19 Q. And this second report you prepared regarding Mr. Grant is
20 approximately 13 pages long; is that correct?

21 A. That's correct.

22 Q. And this second report was written some eight months after
23 you submitted your preliminary report back in September,
24 correct?

25 A. That's correct.

1 Q. Okay.

2 And nowhere in your second report do you indicate any
3 further testing or consultation or neurological examinations
4 or cognitive examinations that you've performed regarding
5 Mr. Grant; is that correct?

6 A. They -- If -- They may not have been there. I don't know
7 if the neuropsychology testing of Dr. Wood was there or the
8 consultation with Dr. Nadkarni.

9 Q. And wasn't the consultation with Dr. Wood included in the
10 information you considered in your preliminary report?

11 A. I don't recall.

12 Q. You don't recall if the psychological testing that you
13 outsourced to Dr. Wood was something in your possession when
14 you prepared your initial report back in September 2015?

15 A. That's what I said.

16 Q. Do you recall that Dr. Wood -- and this is your -- the
17 individual who did the psychological testing, correct?

18 A. The neuropsychological testing.

19 Q. And she is a doctor in Los Angeles, correct?

20 A. Yes. In Claremont, actually.

21 Q. And she found that Dr. -- Mr. Grant had a high average IQ;
22 is that correct?

23 A. Yes, which has nothing to do with brain function, of
24 course.

25 Q. But he has a high average IQ, correct?

1 **A.** Yes.

2 **Q.** Your diagnosis is in the form of a differential diagnosis,
3 correct?

4 **A.** That's correct.

5 **Q.** And you testified previously under oath that a
6 differential diagnosis means what are all the possible
7 options; is that correct?

8 **A.** A differential -- That's not quite correct. A
9 differential diagnosis are (sic) what are the most relevant
10 options rather than all the possible options.

11 **Q.** Nowhere in your preliminary report does it say, "Mr. Grant
12 suffers from temporal lobe epilepsy," period; is that correct?

13 **A.** That's correct.

14 **Q.** And nowhere in your preliminary report does it say,
15 "Mr. Grant suffers from bipolar disorder," period?

16 **A.** That's correct.

17 **Q.** And nowhere in your second report, eight months later,
18 does it say, "Mr. Grant suffers from temporal lobe epilepsy,"
19 period?

20 **A.** That's correct.

21 **Q.** And nowhere in your second report, does it say, "Mr. Grant
22 suffers from bipolar disorder," period?

23 **A.** That's correct. That's the differential diagnosis.

24 **Q.** Mr. Grant didn't report to you a history of seizures,
25 correct?

1 **A.** That's correct.

2 **Q.** And you interviewed Mr. Grant's wife, Carol Grant,
3 correct?

4 **A.** Yes.

5 **Q.** And Mr. Grant's wife did not report a history of seizures
6 by Mr. Grant, correct?

7 **A.** That's correct.

8 **Q.** Those are the only two individuals you specifically
9 interviewed in coming up with your diagnosis regarding
10 Mr. Grant, correct?

11 **A.** That's correct.

12 **Q.** Okay.

13 We looked at some other documents that Mr. Cohan provided
14 to you, correct?

15 **A.** That's correct.

16 **Q.** And nowhere in any of the documents Mr. Cohan provided to
17 you did anyone state that they observed Mr. Grant having a
18 seizure, correct?

19 **A.** That's correct.

20 **Q.** You did not perform a EEG on Mr. Grant prior to preparing
21 your preliminary report; is that correct?

22 **A.** I did not and would not.

23 **Q.** You did not perform an MRI on Mr. Grant prior to preparing
24 your preliminary report; is that correct?

25 **A.** I did not and would not.

1 Q. And you did not perform an EEG or an MRI on Mr. Grant
2 after you prepared your preliminary report?

3 A. That's correct.

4 Q. In your September 10th, 2015 preliminary report, you list
5 a number of characteristics that have been historically
6 attributed to temporal lobe epilepsy.

7 Do you recall that?

8 A. Yes.

9 Q. And some of these characteristics include things such as
10 anger, and guilt, religiosity, philosophical interests,
11 dependence, among others; is that correct?

12 A. Yes.

13 Q. But an individual can be angry and not suffer from
14 temporal lobe epilepsy, correct?

15 A. Sure.

16 Q. And an individual can be religious and not suffer from
17 temporal lobe epilepsy, correct?

18 A. Absolutely. Yes.

19 Q. And an individual can be interested in philosophy and not
20 suffer from temporal lobe epilepsy, correct?

21 A. That's correct.

22 Q. On page 6 of your report, you list a number of those
23 supposed symptoms of temporal lobe epilepsy.

24 Do you recall that?

25 A. These are the symptoms. These are not the supposed

1 symptoms.

2 Q. Okay. These are the symptoms of temporal lobe epilepsy?

3 A. Yes. There are more and you don't have to have all of
4 them, but these are some symptoms, yes.

5 Q. Well, in your paragraph that below this table that lists
6 symptoms, you then state the temporal lobe systems such as,
7 and then you list a few of these symptoms, correct?

8 A. Yes.

9 Q. And then you say "such as magical thinking," and you
10 include "gullibility," correct?

11 A. Yes.

12 Q. But looking at the -- the chart above, which you just said
13 was the inventory of symptoms of temporal lobe epilepsy,
14 magical thinking and gullibility don't appear, do they
15 Dr. Woods?

16 A. Well, actually, if you look at -- magical thinking
17 typically comes from -- and this goes back to your previous
18 question under philosophical interest, and --

19 (Reviewing document.)

20 Q. My question is the words "gullibility" and "magical
21 thinking" do not appear in the table in which you inventoried
22 the symptoms of temporal lobe epilepsy, do they?

23 A. If you're talking about the exact words, that's correct.

24 If you're talking about the terminology that reflects
25 those, that is reflected in that.

1 Q. So it's correct, the exact words do not appear in your
2 inventory of symptoms of temporal lobe epilepsy that you cite
3 in your report, correct?

4 A. The states do, not the exact words.

5 Q. Now, you're -- you testified that it's your understanding
6 that Mr. Grant experiences magical thinking, correct?

7 A. Yes.

8 Q. And these are things that he told you after he was
9 indicted in this particular case, correct?

10 A. Well, since I didn't talk to him until afterwards, yes.

11 Q. So the answer is yes, these are things he told you after
12 he was indicted?

13 A. I think I said yes.

14 Q. In your report, you stated that Mr. Grant described his
15 brother as a manic depressive.

16 Do you recall that?

17 A. Yes.

18 Q. And a few moments ago Mr. Cohan objected and said that
19 Mr. Grant, the defendant, is not a doctor; is that correct?

20 A. Yes.

21 Q. Mr. Grant is not a doctor, correct?

22 A. As far as I know.

23 Q. So he's not qualified to diagnose anyone with a
24 psychological disorder, is he?

25 (Pause in the proceedings.)

1 **THE WITNESS:** The specific answer to your question is
2 no, he is not qualified to make a diagnosis.

3 **BY MR. KLUGE:**

4 **Q.** You didn't interview Mr. Grant's brother, Randall Grant,
5 did you?

6 **A.** I did not.

7 **Q.** And you don't have a professional opinion to a reasonable
8 degree of medical certainty as to whether or not Randall Grant
9 suffers from any mental disorder, do you?

10 **A.** Yes.

11 **Q.** Yes, you've been able to diagnose Randall Grant based on
12 statements from Mr. Grant?

13 **A.** No, I been able to diagnose Mr. Grant, Randall Grant,
14 based on statements that he made about himself.

15 **Q.** Statements that he -- Who's the "he" that he made about
16 himself?

17 **A.** Randall Grant made about his -- his own treatment and that
18 he had manic issues.

19 **Q.** You didn't interview Randall Grant, did you?

20 **A.** No.

21 **Q.** On page 8 of your report, you state that Mr. Grant, like
22 his mother and his brother, share certain characteristics.

23 Do you recall that?

24 **A.** Yes.

25 **Q.** Okay.

1 And you mean that to indicate that both Mr. Grant, his
2 brother Randall Grant and, his mother share some
3 characteristics; is that correct?

4 **A.** Yes.

5 **Q.** And one of those characteristics you described that
6 Mr. Grant the defendant possesses is overall adequate
7 functioning; is that correct?

8 **A.** Yes.

9 **Q.** And you also say that one of the characteristics that
10 Mr. Grant possesses is reliance upon others in spite of
11 adequate day-to-day behavior. Is that correct?

12 **A.** That's correct.

13 **Q.** One of the characteristics that you believe the -- those
14 three individuals share or at least you state they share is
15 odd behaviors, correct?

16 **A.** Yes.

17 **Q.** But those odd behaviors that you articulate that they
18 share are odd behaviors that the defendant reported to you;
19 isn't that correct?

20 **A.** Yes. I -- In this report.

21 **Q.** You didn't interview Randall Grant, correct?

22 **A.** That's correct.

23 **Q.** And you didn't interview Mrs. -- Mr. Grant's mother,
24 correct?

25 **A.** That's correct.

1 Q. In formulating your diagnosis regarding bipolar disorder,
2 you relied in part on the DSM-5, correct?

3 A. Yes.

4 Q. And, in fact, you cite and quote a section from the DSM-5
5 in your preliminary report, correct?

6 A. That's correct.

7 Q. And the DSM-5, articulates various criteria that a
8 physician must find in -- in a patient in order to arrive at a
9 diagnosis for bipolar disorder; is that correct?

10 A. Yes.

11 Q. And these four criteria are labeled A through D, correct?

12 A. Yes.

13 Q. And in order for a patient to meet the diagnostic criteria
14 for bipolar disorder, they have to meet each one of those four
15 criteria, correct?

16 A. According to DSM-5; that's correct.

17 Q. The DSM-5 states that you must have all four to meet the
18 diagnosis for bipolar disorder, correct?

19 A. I don't recall whether you have to meet all four. But you
20 could -- have -- let me see DSM-5 so that I could review that?

21 MR. KLUGE: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. KLUGE: (Handing document.)

24 (Off-the-record discussion between Mr. Kluge and the
25 witness.)

1 **BY MR. KLUGE:**

2 **Q.** And I'm going to ask you -- are you looking at page 123?

3 **A.** Yes.

4 **Q.** Of the DSM-5?

5 **A.** Yes, I am.

6 **Q.** And does it indicate there under the heading "Bipolar I
7 Disorder," the diagnostic criteria, and it says, "For a
8 diagnosis of Bipolar I disorder, it is necessary to meet the
9 following criteria for a manic episode." Is that correct?

10 **A.** Yes. And I think this relates specifically to Bipolar I.

11 **Q.** And then on the subsequent page, there are the -- listed
12 the four criteria for that manic episode, correct?

13 **A.** That's correct.

14 **Q.** And that's what you cut and pasted into your report, your
15 preliminary report, regarding Dr. -- I'm sorry -- regarding
16 Mr. Grant, correct?

17 **A.** That's correct.

18 **MR. KLUGE:** May I approach again, Your Honor?

19 **THE COURT:** Yes.

20 **BY MR. KLUGE:**

21 **Q.** The first criteria -- criterion A from the DSM-5 for
22 bipolar disorder is a distinct period of abnormally and
23 persistently elevated expansive or irritable mood lasting one
24 week or any duration of hospitalization if necessary.

25 Is that correct?

1 **A.** That's correct.

2 **MR. COHAN:** Object, misstates what's in there. It
3 says "at least one week."

4 **THE COURT:** You're saying he misread it?

5 **MR. COHAN:** I am, Your Honor.

6 **THE COURT:** Okay.

7 **MR. KLUGE:** The witness answered that, yes --

8 (Simultaneous colloquy.)

9 **MR. KLUGE:** -- but I'll clarify.

10 **THE COURT:** He did, but I do want the record to be
11 accurate.

12 **MR. KLUGE:** Let me just reread the first criteria,
13 criterion A is "a distinct period of abnormally and
14 persistently elevated expansive or irritable mood lasting at
15 least one week and present most of the day nearly every day or
16 any duration if hospitalization is necessary."

17 **Q.** Does that accurately summarize criterion A?

18 **A.** That's correct.

19 **Q.** With respect to criterion A, your report cites to a claim
20 by Mrs. Grant. Do you recall that?

21 **A.** Would you point me to the page, please.

22 **Q.** I want to direct your attention to page 9, and it says --
23 your report says, "His mood has been chronically elevated and
24 expansive. His wife describes his mood as being elevated
25 their entire marriage. More than 30 years."

1 **A.** Yes.

2 **Q.** Did I read that correctly?

3 **A.** You did.

4 **Q.** So the distinct period of time which you claim Mr. Grant
5 has been in abnormally and persistently elevated and
6 expansive -- expansive mood has lasted 30 years.

7 **A.** It's been her -- their entire relationship, yes.

8 **Q.** Now, criterion A indicates the distinct period in which an
9 individual's mood is expansive or elevated implies that
10 there's a baseline period of time or a baseline mood for the
11 patient; isn't that correct?

12 **A.** No.

13 **Q.** Well, if you are elevated, don't you have to be elevated
14 above something?

15 **A.** That -- That sounds good, but that's actually not
16 accurate, and -- and this is what I talked about earlier in my
17 direct.

18 Bipolar disorder doesn't necessarily have to have both
19 poles. There are some bipolar -- persons that are bipolar
20 that are manic their entire lives, and so they will be in that
21 consistently elevated mood their entire life.

22 The more common way of thinking that people are elevated
23 and then depressed is the classic bipolar, but that's not the
24 way it always presents.

25 **Q.** I'm not asking you if he has a depressive mode. I'm -- My

1 question is the criterion A from the DSM-IV implies -- DSM-5
2 implies that you're in a mood that's elevated above some
3 baseline mood.

4 Is that not true?

5 **A.** No, it doesn't. And I think I answered that question.
6 I'm more than willing to answer it again. It doesn't imply
7 that at all.

8 **Q.** You don't identify any period of time in your report in
9 which Mr. Grant's mood is not elevated, correct?

10 **A.** There doesn't seem to have been a significant period of
11 depression or what we call euthymia. That's correct.

12 **Q.** If a patient does not satisfy the criteria -- of criteria
13 A in diagnosing someone with bipolar disorder pursuant to the
14 DSM-5, does it make sense even to go on to the second
15 criteria?

16 **A.** Absolutely.

17 **Q.** So even if someone doesn't meet criteria A you would spend
18 time evaluating criterion B?

19 **A.** Yes.

20 **Q.** Even though you establish that you must have all four
21 criteria in order to meet the diagnosis of bipolar disorder,
22 correct?

23 **A.** The answer is yes, because I think your reliance on the
24 DSM-5 as a -- it's a classification system. It is not the
25 comprehensive textbook of psychiatry. And so consequently,

1 it's important that you go to each one of those and weigh each
2 of those symptoms, which are called core symptoms.

3 **Q.** But the DSM-5 was important enough for you to cut and
4 paste into your preliminary report, correct?

5 **A.** Yes, but not important enough to answer that question.

6 **Q.** So the second criteria of bipolar disorder is that during
7 the period of a mood disturbance or increased energy or
8 activity, three of the following symptoms are present to a
9 significant degree?

10 **MR. COHAN:** Object.

11 **MR. KLUGE:** And --

12 **MR. COHAN:** Misread it again.

13 **THE COURT:** Hold on. If you're going to read from
14 the report, you have to do so accurately.

15 **MR. KLUGE:** I'm going to summarize, Your Honor, if
16 that's okay.

17 **THE COURT:** Okay. You may do so. Objection
18 overruled.

19 **BY MR. KLUGE:**

20 **Q.** If I paraphrase, for instance, criterion B from the DSM-5,
21 that criterion is that during the period of mood disturbance
22 and increased energy or activity, three of the -- or more of
23 the following symptoms are present to a significant degree and
24 represent a noticeable change from usual behavior.

25 Did I read that -- or paraphrase that correctly?

1 **A.** That's correct.

2 **Q.** Okay.

3 So criterion B requires a noticeable change from usual
4 behavior; is that correct?

5 **A.** That's correct.

6 I'm sorry. I'm sorry. Let me read that again. It says,
7 during the period of mood disturbance, three or more of the
8 following symptoms have been present and have been present to
9 a significant degree.

10 Am I misreading that?

11 **Q.** I'm going to ask you the question, sir. If you want to
12 reread it to yourself, that's fine.

13 **A.** I think --

14 (Simultaneous colloquy.)

15 **THE WITNESS:** Yes. I'm sorry. I think I just
16 misanswered that question. That's why I wanted to make sure
17 that I had it clear. I apologize.

18 What I have is during the period of mood disturbance,
19 three or more of the following symptoms have persisted and
20 have been present to a significant degree.

21 I don't hear the "usual," so I may have missed that. I'm
22 sorry.

23 **MR. COHAN:** The record should reflect it's not in
24 there, Your Honor.

25 **THE COURT:** What's not in there?

1 **MR. COHAN:** The word "usual."

2 **THE COURT:** The word "usual"?

3 **MR. COHAN:** The word "usual" is not present anywhere
4 in there.

5 **THE COURT:** Okay. Thank you.

6 If you're going to read it, you have to read it verbatim.

7 **MR. KLUGE:**

8 **Q.** Do you have a copy, sir, of the DSM-5?

9 **A.** I don't.

10 **Q.** You don't.

11 **MR. KLUGE:** May I approach, Your Honor?

12 **THE COURT:** Yes, you may.

13 **MR. KLUGE:** May I ask a question from up here, Your
14 Honor?

15 **THE COURT:** All right. Just speak into the
16 microphone, please.

17 **BY MR. KLUGE:**

18 **Q.** I'm going to read criterion B along with you, Dr. Woods.
19 Is that okay?

20 **A.** This is not -- this is a criterion for the manic episode.
21 This is not the criterion for which you were describing, sir.
22 This is not criteria for bipolar. It's a different page.
23 The criteria for bipolar, it represents -- you're correct --
24 represents noticeable change in usual behavior.

25 **Q.** So is it correct that it does include the phrase, "and

1 represents a noticeable change from usual behavior"?

2 **A.** That's correct.

3 **Q.** Thank you.

4 **MR. COHAN:** The record should reflect that's not on
5 page 8 of Dr. Woods' report.

6 **THE COURT:** I think he was referring to the DSM, not
7 his report in any event.

8 **MR. COHAN:** Right, but the reference was that this
9 was lifted out of the DSM-5. Clearly the word "usual" is not
10 in Dr. Woods' report.

11 **THE COURT:** All right.

12 **MR. COHAN:** That's my point.

13 **THE COURT:** All right. Why don't you rephrase the
14 question so the jury is clear about the source of the
15 definition.

16 **BY MR. KLUGE:**

17 **Q.** Dr. Woods, the -- the phrase we just read and the book
18 that I just showed you that has the phrase "and represents a
19 noticeable change from usual behavior," that's the DSM-5; is
20 that correct?

21 **A.** That's correct.

22 **Q.** And that's the latest edition of the Diagnostic and
23 Statistical Manual of Mental Disorders?

24 **A.** That's correct.

25 **Q.** Thank you.

1 With respect to that criterion B and the symptoms that are
2 listed in the DSM-5, the first one is inflated self-esteem or
3 grandiosity, correct?

4 **A.** Yes.

5 **Q.** And you found that Mr. Grant has an inflated self-esteem
6 and is grandiose, correct?

7 **A.** Yes. Can be.

8 **Q.** You found that Mr. Grant thinks highly of himself,
9 correct?

10 **A.** Yes.

11 **Q.** The second symptom is decreased need for sleep, correct?

12 **A.** That's correct.

13 **Q.** In your report, you indicated that -- that Mr. Grant
14 sleeps very little but that he feels rested with a reduced
15 amount of sleep, correct?

16 **A.** That's correct.

17 **Q.** Your report does not identify a period of time in which
18 Mr. Grant required normal or usual amount of sleep, does it?

19 **A.** There was never a period of time in which he had normal
20 sleep.

21 **Q.** Another one of these symptoms in criterion B that you also
22 discuss in your report is excessive involvement in pleasurable
23 activities that have a high potential for painful
24 consequences.

25 Do you recall that?

1 **A.** Yes.

2 **Q.** And the DSM-5 lists some specific examples of these
3 pleasurable activities with a high potential for painful
4 consequences; is that correct?

5 **A.** That's correct.

6 **Q.** And those examples in the DSM-5 are engaging in
7 unrestrained buying sprees, correct?

8 **A.** That's right one.

9 **Q.** And sexual indiscretions; is that --

10 **A.** That's two.

11 **Q.** And foolish business investments.

12 **A.** That's correct.

13 **Q.** Your report does not indicate any unrestrained buying
14 sprees by Mr. Grant, correct?

15 **A.** I'm -- I'm not sure that I would qualify the second buying
16 of the hydroplane in that way, but I would agree with you that
17 my -- my report does not reflect that.

18 **Q.** Your report does not contain any information of sexual
19 indiscretions by Mr. Grant, does it?

20 **A.** No, these are examples, you know, that you're -- I'm
21 sorry. These are examples. That's correct.

22 **Q.** Thank you, Doctor.

23 And you're not -- your report does not list any foolish
24 business investments by Mr. Grant, does it?

25 **A.** Well, no, I would have to disagree with that.

1 Q. Well, did you look at business records from Grant
2 Engineering & Manufacturing?

3 A. Well, I don't -- Well, the answer is yes, but I don't
4 consider that to be the foolish business investments.

5 Q. Now, that was a successful business, wasn't it?

6 A. Relatively successful, yes.

7 Q. Well, do you consider half a million dollars a year in
8 ordinary income to be relatively successful?

9 A. It depends upon the business and depends upon the way in
10 which the business is growing and whether all partners agree
11 that the business is growing successfully.

12 Q. Do you think that having ordinary income equal to
13 one-third of gross receipts is a successful business?

14 A. It depends upon the business. It depends upon the income.
15 It depends on whether all partners agree that the business is
16 successful.

17 Q. Are you familiar with the plastic molds injection
18 industry, sir?

19 A. I'm not familiar with the plastic mold injection industry,
20 but I'm familiar -- well, that maybe hearsay so -- the answer
21 is no.

22 Q. No, you're not familiar with the plastic injection mold
23 industry, are you?

24 A. Only to the degree that its been described by Mr. Grant
25 and the records that I've seen.

1 Q. You don't know what a respectable profit rate is in the
2 plastic molding injection industry, do you?

3 A. No. No.

4 Q. You're not familiar with how many employees Grant
5 Engineering has, are you?

6 A. I'm somewhat familiar, yes.

7 Q. Are you familiar with how many customers Grant Engineering
8 has?

9 A. I know they had one major customer that had about 87
10 percent of the business, and they had perhaps several other
11 customers.

12 Q. And are you aware they had \$1.6 million approximately in
13 gross receipts every year from 2005 through 2009?

14 A. From 2005 -- I am familiar with that, yes.

15 Q. Yes.

16 Pleasurable activities one might think would also involve
17 excessive drinking, correct?

18 MR. COHAN: Object, relevance, Your Honor. There are
19 any number of pleasurable activities that are not at issue
20 here.

21 THE COURT: Overruled.

22 THE WITNESS: It possibly could, yes.

23 BY MR. KLUGE:

24 Q. And it's a pleasurable activity that has a high risk --

25 A. Excessive drinking.

1 Q. -- of --

2 A. Oh, I'm sorry.

3 Q. -- painful consequences, correct?

4 A. Excessive drinking could, yes.

5 Q. Mr. Grant doesn't drink to excess, does he?

6 A. No.

7 Q. Something like using recreational drugs might also
8 represent something that's a high-risk or high -- I'm sorry --
9 a pleasurable activity that has a high potential for painful
10 consequences, correct?

11 A. Those are other -- those are other options besides the one
12 that he did engage in; you're correct.

13 Q. Well, he didn't engage in recreational drug use?

14 A. No.

15 Q. Didn't engage in sexual indiscretions?

16 A. No.

17 Q. Didn't engage in excessive drinking?

18 A. No.

19 Q. He doesn't go sky diving?

20 A. Not that I'm aware of.

21 Q. You're not aware that he -- Correct?

22 A. Correct.

23 Q. He doesn't race cars?

24 A. No. He has foolish business investments.

25 Q. I'm going to -- the third or the criterion C for bipolar

1 disorder -- and I'm going to paraphrase again -- is that the
2 mood disturbance is sufficiently severe to cause marked
3 impairment in social or occupational functioning or to
4 necessitate hospitalization to prevent harm to self or others.

5 Is that a fair summary of criterion C?

6 **A.** Sure.

7 **Q.** There was no hospitalization of Mr. Grant related to his
8 so-called mental condition, correct?

9 **A.** That's correct.

10 **Q.** And Mr. Grant has been married for 30 years, correct?

11 **A.** Yeah.

12 **Q.** And there was nothing in your report to indicate that
13 Mr. Grant was unhappily married, correct?

14 **A.** Difficultly married but not unhappily married.

15 **Q.** Not unhappily married, correct?

16 **A.** Difficultly married but not unhappily married.

17 **Q.** Well, there's nothing in your report regarding Mr. Grant's
18 two daughters, correct?

19 **A.** That's correct.

20 **Q.** You didn't interview Mr. Grant's two daughters, did you?

21 **A.** No.

22 **Q.** Were you aware that Mr. Grant's two daughters have grown
23 to adulthood, have attended college and are now married
24 themselves?

25 **A.** Yes.

1 Q. And there's nothing in your report that indicates that
2 Mr. Grant was any -- in any way a bad parent to his two
3 daughters, correct?

4 A. That's correct.

5 Q. There's nothing in your report to indicate that Mr. Grant
6 was a bad husband to his wife, correct?

7 A. Hmm, would you define "bad"?

8 Q. I'm asking you the questions, Dr. Woods.

9 A. I can't answer that until the word "bad" is defined.

10 Q. Okay.

11 Mr. Grant has continued during all the time from 2005
12 through 2009 to own and to operate Grant Engineering, correct?

13 A. Yes.

14 Q. You didn't interview any of the employees at Grant
15 Engineering for information related to Mr. Grant, did you?

16 A. I did not personally interview them, no.

17 Q. And these would have been the people that spend
18 approximately eight hours a day with Mr. Grant, correct?

19 A. Yes.

20 Q. And those would have been employees that Mr. Grant oversaw
21 on a day-to-day basis, correct?

22 A. Yes.

23 Q. And Mr. Grant was in charge of just about all the
24 day-to-day operations of Grant Engineering & Manufacturing
25 from 2005 through 2009, correct?

1 **A.** Yes. With help.

2 **Q.** I'm sorry?

3 **A.** With help.

4 **Q.** Well, he was the boss, right?

5 **A.** With help.

6 **Q.** The -- The boss has employees, correct?

7 **A.** And -- And he relies upon those employees to get things
8 done.

9 **Q.** But the --

10 **A.** So he was not an independent -- it's not a singular shop.
11 There was a bookkeeper, there was an accountant, so Mr. --
12 you're absolutely correct that Mr. -- that he was the boss. I
13 don't mean to -- I'm sure you're not implying that the boss
14 does everything themselves because that wasn't the case.

15 **Q.** But everyone reports to Mr. Grant, correct?

16 **A.** Yes.

17 **Q.** Were you aware that Mr. Grant, while he didn't file and
18 pay his own taxes, was withholding taxes from his employees'
19 wages --

20 **A.** Yes.

21 **Q.** -- and paying them to the IRS, as he was required to do?

22 **A.** Yes.

23 **Q.** Going to ask you to look back at the symptoms identified
24 in criterion B for bipolar disorder. And we talked about a
25 number of them, the grandiosity, the decreased need for sleep,

1 the third one is more talkative than usual or pressure to keep
2 talking, correct?

3 A. Yes.

4 Q. And then there are some other -- other symptoms here as
5 well, correct?

6 A. That's correct.

7 Q. Nowhere in these symptoms for bipolar disorder does the
8 word "gullible" appear, does it?

9 A. That's probably true. Yes.

10 Q. Probably true.

11 A. Yeah. That's true.

12 Q. Would it help if showed you the DSM-5 --

13 A. No, I would agree.

14 Q. -- for you to confirm?

15 A. I would agree with that. The sum of the symptoms equal
16 gullibility.

17 Q. There's no question pending, Dr. Woods.

18 A. I apologize.

19 Q. You state in your report that magical thinking is a
20 symptom of bipolar disorder.

21 A. Yes.

22 Q. But in looking at the symptoms listed in criterion B for
23 bipolar disorder, magical thinking doesn't appear there,
24 correct?

25 A. (Reviewing document.)

1 In criterion B, not criteria -- it is in criterion C,
2 which we were talking about.

3 Q. The word "magical thinking" does not appear as one of the
4 listed symptoms in criterion B?

5 A. Criterion B, that's correct.

6 Q. Thank you.

7 You focus some of your -- a fair amount of your report on
8 this issue of gullibility. Isn't that the specific question
9 that Mr. Cohan specifically directed you to look at,
10 gullibility, correct?

11 A. Yes.

12 Q. We haven't talked about criterion D in your report, or
13 criterion D within the DSM-5, but isn't it true in your report
14 you state that there is some uncertainty with respect to
15 criterion D; is that correct?

16 A. (Reviewing document.)

17 Can you direct me to that, please.

18 Q. Yes, sir. If you looked at the bottom of page 10 of your
19 report, you indicate there that there is some uncertainty
20 remaining with criterion D; is that correct?

21 A. (Reviewing document.)

22 Only as it relates to the differential diagnosis.

23 Q. So there is some uncertainty with respect to criterion D,
24 correct?

25 A. As it relates to the differential diagnosis.

1 Q. Well, then you go on to state that -- that there is a
2 dilemma with your diagnosis and you state that additional
3 testing -- you have "my reveal," but I think you mean "may
4 reveal" that Mr. Grant experiences these symptoms due to a
5 medical condition, correct?

6 A. That's correct.

7 Q. But you didn't do any additional testing of doctor -- of
8 Mr. Grant, did you?

9 A. After consultation, no, I did not.

10 (Pause in the proceedings.)

11 **BY MR. KLUGE:**

12 Q. One of the sources of information you received to prepare
13 your report and your diagnosis was the family history that you
14 received from Mr. Grant, correct?

15 A. That was one, yes.

16 Q. But Mr. Grant was the individual who provided to you the
17 family medical history, correct?

18 A. Not completely, but he did.

19 Q. He provided -- He was the only individual that provided
20 you information regarding the family history; is that correct?

21 A. He was the only person that provided me.

22 Q. You didn't interview any other family members of
23 Dr. (sic) Grant --

24 A. Mr. Grant.

25 Q. -- Mr. Grant to confirm his family medical history,

1 correct?

2 **A.** I did not.

3 **MR. COHAN:** Asked and answered.

4 **THE COURT:** Sustained.

5 **BY MR. KLUGE:**

6 **Q.** You didn't review any medical history from Mr. Grant's
7 mother, correct?

8 **A.** That's correct.

9 **Q.** You didn't review any medical history of Mr. Grant's
10 brother, Randall Grant, correct?

11 **A.** Um, I -- I reviewed Mr. -- description of his medical
12 history so --

13 **Q.** Is Mr. Grant a doctor?

14 **A.** Well, I think he knows what he's got. I mean, I think he
15 knows what he has. He described his own -- I'm talking about
16 Randall Grant, and he described his own medical history so --

17 **Q.** Let me ask you this: Did you review any medical records
18 prepared by a competent physician relating to Randall Grant?

19 **A.** As opposed to Mr. Grant's description of his medical
20 problems; is that correct?

21 **Q.** My question was, did you review any medical records
22 prepared by a compensate medical professional related to
23 Randall Grant.

24 **A.** I did not review any medical records, only his statement.

25 **Q.** You did not review the medical history of Mr. Grant's

1 daughters, correct?

2 **A.** That's correct.

3 **Q.** Your report does not indicate whether or not you refer
4 Mr. Grant for any treatment, correct?

5 **A.** That's correct.

6 **Q.** And Mr. Grant prior to meeting you, in preparation for
7 this litigation, has never been diagnosed as suffering from a
8 mental disorder; is that correct?

9 **A.** That's correct.

10 **Q.** Despite the eight-month period of time between your
11 initial preliminary report --

12 **MR. COHAN:** Object as argumentative, beginning with
13 "despite."

14 **THE COURT:** Let's hear the whole question first.

15 **BY MR. KLUGE:**

16 **Q.** From September -- From when you prepared your preliminary
17 report until you prepared your second report on May 16th,
18 2016, you didn't conduct any additional testing of Mr. Grant;
19 is that correct?

20 **A.** Consultation but no testing.

21 **Q.** No testing.

22 **A.** That's correct.

23 **Q.** Mr. Grant never reported having a seizure to you, correct?

24 **A.** That's correct.

25 **Q.** Mr. Grant never checked himself into a mental hospital,

1 correct?

2 **A.** That's correct.

3 **Q.** He's never taken a day off from (sic) a mental condition,
4 has he?

5 **A.** I can't answer that.

6 **Q.** And from 2009 -- 2005 through 2009, Mr. Grant continued as
7 the boss and manager at Grant Engineering & Manufacturing,
8 correct?

9 **A.** Yes.

10 (Pause in the proceedings.)

11 **MR. KLUGE:** May I have a moment, Your Honor?

12 (Pause in the proceedings.)

13 **MR. KLUGE:** Thank you, Dr. Woods. I have no further
14 questions.

15 **THE WITNESS:** Thank you. I appreciate it very much.

16 **THE COURT:** Any redirect?

17 **MR. COHAN:** Oh, yes, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. COHAN:**

20 **Q.** Good morning again, Dr. Woods.

21 **A.** Good morning. We're still morning, so we're doing okay.

22 **Q.** There you go.

23 You were asked questions about your involvement in
24 performing forensic psychiatric service.

25 Do you recall that?

1 **A.** Yes.

2 **Q.** Now, you were involved in litigation, both in civil and
3 criminal cases, I believe you testified?

4 **A.** That's correct.

5 **Q.** And what sort of service do you provide in civil cases?

6 **A.** In civil cases, I work with employment law cases, elderly
7 abuse cases, competency cases, competency to contract,
8 et cetera.

9 **Q.** How many times have you testified as an expert witness in
10 neuropsychiatry or psychiatry?

11 **A.** Probably --

12 **Q.** Can you give us an estimate?

13 **A.** Probably over the course of thirty years, a hundred,
14 hundred twenty-five. I testify perhaps four or five times a
15 year.

16 **Q.** Okay. And what percentage would you say is your best
17 estimate of testifying in criminal cases for defense?

18 **A.** I would say that about 30 percent of my practice is
19 criminal cases of my forensic practice.

20 **Q.** Okay.

21 **A.** And 70 percent is civil.

22 **Q.** Okay. And that -- And -- Okay. Thank you.

23 Now, we're -- Now I heard numerous questions about
24 Mr. Grant receiving -- or excuse me -- not ever receiving any
25 psychological or psychiatric treatment.

1 **A.** Yes.

2 **Q.** Now, can you tell us amongst people who suffer from the
3 same symptoms and condition as Mr. Grant generically
4 described, approximately what percent of those people do not
5 ever seek treatment?

6 **A.** About 80 percent.

7 **Q.** Eighty percent.

8 So is part of the problem that people who are bipolar
9 and/or suffer from temporal lobe epilepsy or differential
10 diagnosis -- excuse me -- symptoms that give rise to
11 differential diagnosis that they cannot recognize that they
12 have a problem?

13 **A.** Well, there are two issues. One issue is that many times
14 the symptoms will not impair their functioning to such a
15 degree that they become obvious to -- to the general
16 population or they impair their ability to -- to harm -- to
17 not harm themselves, et cetera.

18 So there are -- These diseases occur in a spectrum, so
19 there are significant numbers of people that have symptoms of
20 bipolar disorder that never get diagnosed from a psychiatric
21 point of view until there's a circumstance like this one or
22 similar where there's some incredible problem that's occurred.

23 Secondly, because of the use of medications, we tend to
24 focus treatment only on medication today, although that's
25 changing. But there is a significant number of people on --

1 the less severe end of bipolar and other symptoms who are not
2 treated with medications.

3 **BY MR. COHAN:**

4 **Q.** Now, given Mr. Grant's condition as you've diagnosed him,
5 is Mr. Grant receiving treatment voluntarily or is it
6 mandatory?

7 **A.** Well, he's not -- he's not receiving treatment, and he
8 doesn't believe he needs treatment.

9 **Q.** So he's not required by law to seek treatment, is he?

10 **A.** That's correct.

11 **Q.** Even though in your opinion, he should seek treatment;
12 isn't that so?

13 **MR. KLUGE:** Objection, argumentative.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** Yes.

16 **BY MR. COHAN:**

17 **Q.** Now, you were asked questions about the testing, and in
18 particular, you were asked about the fact that there was no
19 electroencephalogram. That's the -- what an EEG is, right?

20 **A.** That's correct.

21 **Q.** Now, what is an electroencephalogram, Doctor?

22 **A.** And I'd like to, if I could, put the brain up one more
23 time to answer your question.

24 **Q.** Please.

25 **A.** Your Honor --

1 **MR. COHAN:** Can we do that?

2 (Off-the-record discussion.)

3 **BY MR. COHAN:**

4 **Q.** Well, can you --

5 **A.** Yeah. Yeah, sure.

6 **Q.** In the interest of moving along and not delaying this --

7 **A.** That --

8 **Q.** I'm sure the picture's indelibly printed on everybody's
9 brain, if I may put it that way?

10 **A.** An electroencephalogram or EEG is a test for the
11 electrical brain waves. There -- Your brain works by
12 electricity, and the electrical waves can be measured to some
13 degree.

14 So an EEG -- and there are multiple types of EEG's -- are
15 the tests that test for electrical activity in your brain.

16 **Q.** Now, in order to test temporal lobe epilepsy, is this
17 intrusive and/or painful for a person to be tested, given this
18 condition?

19 **A.** Yes, because most temporal lobe epilepsy occurs in the
20 middle of the brain. So it doesn't occur on the outside of
21 the brain. And as we looked at that picture, it really occurs
22 in the middle of the brain. And so there are one of two ways
23 that you can do that.

24 The old way was to actually to have a lead go through the
25 nose into the open area and touch the temporal lobe of the

1 brain, which was extremely uncomfortable. And the new way,
2 which is even more uncomfortable, is a -- what they call a
3 magneplanar (phonetic) where they actually to have place
4 electrodes deep into your brain in order to catch that -- that
5 middle area 'cause that's where most of temporal lobe epilepsy
6 occurs, in the middle of the brain.

7 So it's -- it was recommended to me by Dr. Nadkarni, who's
8 the head of epilepsy at NY -- New York University that that's
9 not --

10 **MR. KLUGE:** Objection, Your Honor. Calls for
11 hearsay.

12 **THE COURT:** Sustained.

13 **BY MR. COHAN:**

14 **Q.** Anyway, you made a determination based on your
15 professional expertise and experience that it was not
16 warranted in this case for Mr. Grant to have an EEG; is that
17 right?

18 **A.** Yes, sir, and there's another reason.

19 **Q.** Please. What is the other reason?

20 **A.** Temporal lobe epilepsy is a disease -- is a disorder of
21 symptom diagnosis, as in -- as most of epilepsy. Fifty
22 percent of people that have diagnosed epilepsy have normal
23 EEG's. Diagnosed treated epilepsy have normal EEG's. And so
24 the symptoms were great enough that I could include that in my
25 differential diagnosis.

1 Q. So is it fair to say that a great deal of what, in fact,
2 is a disease of temporal lobe epilepsy cannot be identified by
3 the EEG's that we have because they're just not sensitive
4 enough and can't get the job done to definitively --

5 MR. KLUGE: Objection.

6 BY MR. COHAN:

7 Q. -- define it?

8 MR. KLUGE: It's leading.

9 THE COURT: Sustained.

10 BY MR. COHAN:

11 Q. Okay. Can you explain why we don't generally seek to use
12 the EEG to detect temporal lobe epilepsy, currently?

13 A. The EEG is the least sensitive of all invasive brain
14 equivalent.

15 As I said earlier, 50 percent of people that have
16 diagnosed, treated epilepsy have normal EEG's.

17 So it is, in fact, the least sensitive until you actually
18 can go into the brain and put the electrodes deeply enough
19 into the brain.

20 Q. Okay. Now, you were also asked about the fact that you
21 did not recommend or have Mr. Grant tested for an MRI. And I
22 believe that stands for Magnetic Resonance Imaging; is that
23 right?

24 A. That's correct.

25 Q. And what is Magnetic Resonance Imaging?

1 **A.** Magnetic Resonance Imaging is a way of indirectly looking
2 at brain structure.

3 So it's -- it's a test where you indirectly look at how
4 the brain is built. And you -- and to use -- it's sliced very
5 thinly, so it allows you to look and see if there are
6 structural abnormalities in the brain.

7 It tells you nothing about how the brain functions. It
8 just tells you whether there's a hole in it or not.

9 **Q.** So is it your testimony that the MRI would not be
10 sufficiently likely to detect any abnormality, that it didn't
11 make sense to employ that type of test? Or is there some
12 other explanation?

13 **MR. KLUGE:** Objection, leading.

14 **THE COURT:** Overruled. I'll allow that one.

15 **THE WITNESS:** Thank you, Your Honor.

16 Yeah, an MRI both temporal lobe epilepsy and bipolar
17 disorders are not disorders of structural problems in the
18 brain. They really are disorders of the primarily biochemical
19 problems in the brain or electrical problems in the brain.
20 And so, again, with consultation, a -- an MRI was not
21 recommended.

22 **BY MR. COHAN:**

23 **Q.** You were asked a number of times by Mr. Kluge about the
24 fact that you hadn't interviewed Randy -- Randy Grant.

25 Did you receive a -- statements that Mr. Grant made to the

1 IRS agents about his condition?

2 **A.** Yes.

3 **Q.** Did you credit those statements as being accurate
4 representations of his experience that you relied on?

5 **A.** Yes.

6 **Q.** If you had asked him the questions in person about his
7 behavior that he related to agents, is it your belief he would
8 have given the same answers?

9 **MR. KLUGE:** Objection, Your Honor.

10 **THE COURT:** Calls for speculation. Sustained.

11 **BY MR. COHAN:**

12 **Q.** You assumed that Mr. Randy Grant was being truthful when
13 he spoke to the agents?

14 **MR. KLUGE:** Objection, Your Honor, argumentative.

15 **THE COURT:** Sustained.

16 **BY MR. COHAN:**

17 **Q.** Now, you were asked a number of questions about the
18 specific criteria for various mental illnesses and conditions
19 in DSM-5?

20 **A.** Yes.

21 **Q.** Do you recall those questions?

22 **A.** Yes.

23 **Q.** Do all mental illnesses fit into categories that are
24 provided in the DSM-5?

25 **A.** No.

1 Q. So if you limit yourself to what fits in the category, you
2 miss a lot of mental illnesses because they don't fit into
3 categories; is that a fair statement?

4 MR. KLUGE: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: You -- If I can answer that -- the
7 answer is yes with qualifications.

8 BY MR. COHAN:

9 Q. Please qualify it as appropriate, Doctor.

10 A. There are some diagnosis that we know are completely
11 accurate, like chronic trauma, Type II PTSD, that is not in
12 the DSM-5.

13 We also know that, as Mr. Kluge asked me before, someone
14 may not meet a certain criteria and yet have a psychiatric --
15 have that psychiatric disorder because they have what are
16 called core symptoms. They may have a symptom that is so
17 heavily weighted that it's outweighs all the other criteria.

18 Now, that's not relevant in this particular case because
19 Mr. Grant actually hit every pitch. He met criteria A, he met
20 criteria B, and he met criteria C, and the only question that
21 there was for criteria D was whether it was temporal lobe or
22 bipolar. So he certainly -- he certainly met all criteria in
23 this case.

24 Q. Now, you were asked a number of questions about criterion
25 B. Well, let me just touch on A. Were you satisfied by the

1 observations made of Mr. Grant himself and the statements made
2 about Mr. Grant's elevated mood to opine that he did indeed
3 have had a distinct period of abnormally or persistently
4 elevated or expansive or irritable mood that lasted for 30
5 years?

6 **A.** Yes.

7 **Q.** Is there any reason to doubt that? Is there some basis
8 why people would misstate that if it were not so that you're
9 aware of?

10 **MR. KLUGE:** Objection, Your Honor. Calls for --

11 **THE COURT:** Overruled.

12 **THE WITNESS:** There appears to be no reason to doubt
13 that he talk -- I talked with his wife who acknowledged it.
14 Certainly, a history -- I don't know about 30 years, but
15 certainly a history of angry irritable behavior was discussed
16 by his brother in emails as well.

17 **BY MR. COHAN:**

18 **Q.** And did you note anything about him foaming at the mouth
19 or rage that was alleged by his brother Randy?

20 **MR. KLUGE:** Objection, Your Honor. Calls for
21 hearsay.

22 **THE COURT:** I'm not sure that it does.

23 What do you mean by "did you note"?

24 **BY MR. COHAN:**

25 **Q.** Did you read all the memoranda of interview that the

1 government provided me that I forwarded to you where the
2 interviewers were the agents sitting over here and Randall
3 Grant --

4 **MR. KLUGE:** Objection. It's now double hearsay.

5 **THE COURT:** So you're referring to did he read it in
6 the statement written by Mr. Grant?

7 **MR. COHAN:** Yes, I am, Your Honor.

8 **THE COURT:** All right. That calls for hearsay.
9 Sustained.

10 **BY MR. COHAN:**

11 **Q.** May I invite your attention now to criterion B. During
12 the period of mood disturbance, three or more of the following
13 symptoms have persisted; four if the mood is only irritable,
14 having been present to a significant degree.

15 The first one is inflated self-esteem or grandiosity. Any
16 doubt in your mind that Mr. Grant has exhibited symptoms of
17 inflated self esteem or grandiosity?

18 **A.** No.

19 **Q.** The second one is decreased need for sleep. Any doubt in
20 your mind that he exhibited the symptoms for decreased need
21 for sleep?

22 **MR. KLUGE:** Objection, Your Honor. Just bolstering
23 the witness, going to go through every single question.

24 **THE COURT:** You know, you could get through it much
25 quicker if you would just let him do it. Overruled.

1 We covered this ground before, but you're certainly free
2 to emphasize the points you wish to.

3 **MR. COHAN:** I didn't cover it before, Your Honor.
4 This is redirect. This was all stuff that was raised on
5 cross.

6 **THE COURT:** Sure, but we've heard it. But go ahead.

7 **BY MR. COHAN:**

8 **Q.** The third criterion under criterion B is more talkative
9 than usual or pressure to keep calling -- excuse me --
10 talking.

11 Did you observe that Mr. Grant was more talkative than
12 most people or exhibited pressure to keep talking?

13 **A.** He was not more talkative. He had pressured speech.

14 **Q.** And what is pressured speech?

15 **A.** Pressured speech is really pathognomonic or bipolar
16 disorder. It's a type of speech that just makes you want to
17 break in, just say "hold it." Right. And it can go on and go
18 on and go on.

19 **Q.** The next criterion within B is flight of ideas or
20 subjective experience that thoughts are racing. Did you
21 observe that during your interviews with Mr. Grant?

22 **A.** Yes.

23 **Q.** Distractibility is the next criterion. Did you observe
24 that Mr. Grant was distractible, i.e., his attention was too
25 easily drawn to unimportant or irrelevant external stimuli?

1 **A.** I did not see him as consistently distractible.

2 **Q.** Okay. Now, the questions that -- there are numerous
3 questions about access -- excessive involvement in pleasurable
4 activities that have a high potential for painful
5 consequences. And specifically one of the examples is foolish
6 business investments.

7 **A.** Yes.

8 **Q.** Did you get to give your full response to what you felt
9 were Mr. Grant's foolish business investments?

10 **A.** No.

11 **Q.** Would you please expand. I think you mentioned airplanes
12 and airplane parts. Was there more?

13 **A.** I think airplane and airplane parts. I think investing in
14 commodities. And frankly --

15 **Q.** You mean, the --

16 **A.** And the issues that we -- that are -- that he was indicted
17 for.

18 **Q.** Well, did you feel like the investments he made in these
19 various legal tax avoidance organizations and representation
20 constituted foolish business investment?

21 **A.** Yes.

22 **Q.** Okay.

23 Now, you were also asked about his occupational
24 functioning. We're down to criterion C, and you were asked
25 questions about the business and the profit.

1 Is it your position that if a business is making \$500,000,
2 it's still being adequately run if it were properly run, it
3 could make three times that much because it could have been
4 grown?

5 You understand my question? Looks like you didn't. Let
6 me try it again.

7 You were asked questions about -- by Mr. Kluge about
8 running the -- the business. And Mr. Grant -- I should say
9 Rick Grant, as we know, is half owner of Grant Engineering.
10 And we've all seen the statistics now of the income and profit
11 that was made.

12 Did you consider any sources that indicated that
13 Rick Grant really wasn't functioning adequately because he
14 failed to manage the business effectively and grow the
15 business?

16 **A.** Yes.

17 **Q.** And how were you able to make that determination?

18 **A.** Well, the question was did I consider other sources. And
19 the source that I considered was his brother and a series of
20 emails between he and his brother that talked about him over
21 the course --

22 **MR. KLUGE:** Objection, again, Your Honor. Relying --

23 **THE COURT:** -- permit any hearsay statements on this.

24 **MR. COHAN:** Okay.

25 **Q.** You did learn, though, that basically the business relied

1 on one major customer; is that right?

2 **A.** That's correct.

3 **Q.** And so you were able to infer that it didn't grow,
4 correct?

5 **A.** I can't say that I would infer that it didn't grow. But I
6 would say that it did rely upon one customer and that it was
7 a -- and that Mr. Grant had bookkeepers and accountants that
8 worked with him that he wasn't -- he didn't work purely
9 independently.

10 (Pause in the proceedings.)

11 **BY MR. COHAN:**

12 **Q.** You were asked questions about whether Rick Grant was a
13 bad husband. Would you define "bad" in this context of a bad
14 husband because Mr. Kluge didn't give you that definition?

15 **A.** I -- I couldn't define "bad," and that's what my
16 difficulty -- my difficulty.

17 **Q.** Is it just too broad a term?

18 **A.** It's too broad a term, and it doesn't necessarily define
19 the ways in which Mr. Grant impacted his marriage.

20 **Q.** Well, are there people whom you would call would be bad
21 husbands who don't suffer from any mental disease or defect,
22 they're just married to the wrong person?

23 **A.** Or they have their own problems.

24 **Q.** Okay.

25 Now, you were also asked questions about Mr. Grant being

1 in charge of the business.

2 **A.** Yes.

3 **Q.** Did you come to any conclusions about whether Mr. Grant
4 was really in charge or whether basically the employees were
5 running things without much help from Mr. Grant during the
6 period of time we're talking about?

7 **MR. KLUGE:** Objection, Your Honor. He's not an
8 expert on the operations of Grant Engineering and what's a
9 proper business methodology to run this business. He's an
10 expert on mental disorders.

11 **THE COURT:** Overruled.

12 **BY MR. COHAN:**

13 **Q.** Do you have the question in mind, Doctor?

14 **A.** I -- I do have the question in mind.

15 But I'd like to hear it one more time. I want to be
16 specific about my answer.

17 **Q.** That means I have to remember what I asked you.

18 **A.** Can we have it read back?

19 **MR. COHAN:** Could we have it read back, Your Honor?

20 **THE COURT:** All right. Raynee --

21 **MR. COHAN:** I'm having a short term memory lapse. I
22 apologize.

23 (Pause in the proceedings.)

24 **THE WITNESS:** Here let me --

25 **THE COURT:** Hold on. Hold on.

1 **THE WITNESS:** Okay.

2 **THE COURT:** Raynee, would you read it back?

3 (Record read as follows:

4 "Q. Did you come to any conclusions about whether
5 Mr. Grant was really in charge or whether basically the
6 employees were running things without much help from Mr. Grant
7 during the period of time we're talking about?")

8 **MR. KLUGE:** Objection, your Honor.

9 **THE COURT:** You already objected, and I already
10 overruled it. It's the same question.

11 You may answer.

12 **THE WITNESS:** Thank you, Your Honor.

13 I think it would be speculative for me to answer that
14 specific question.

15 **MR. COHAN:** Very well.

16 **Q.** Did you learn that Mr. Grant was responsible for making
17 decisions to pay the employees extremely well if not
18 excessively?

19 **MR. KLUGE:** Objection, Your Honor, argumentative.

20 **THE COURT:** Overruled.

21 **THE WITNESS:** Yes.

22 **BY MR. COHAN:**

23 **Q.** Would you relate that to grandiosity or some other symptom
24 that Mr. Grant exhibited?

25 **A.** Grandiosity.

1 **Q.** Did you ever understand what Mr. Grant was talking about
2 when he referred to an electromagnetic pulse attack?

3 **A.** No.

4 **Q.** Would you say that was a strange idea?

5 **A.** It was unusual.

6 **MR. KLUGE:** Objection, Your Honor. Calls for
7 speculation and is vague.

8 **THE COURT:** Overruled.

9 **BY MR. COHAN:**

10 **Q.** I can make it more focused.

11 Was it symptomatic of the illness that you diagnosed for
12 Rick Grant?

13 **A.** Yes.

14 **Q.** And was -- did you learn that Mr. Grant was giving money
15 to employees for earthquake preparedness and other disasters?

16 **A.** Yes.

17 **Q.** Do the things that Mr. Grant referred to such as
18 earthquake preparedness and electromagnetic pulse attacks
19 constitute symptoms of paranoia?

20 **A.** Actually I separated those two out. Mr. -- I felt as
21 though there are some of the things that Mr. Grant did that
22 certainly made sense, particularly given where his shop was
23 and again where he lives in terms of the earthquake
24 preparedness.

25 On the other hand, there was no basis that I could find

1 for the electromagnetic pulses. Some of the other, in my
2 professional opinion, delusional thinking that Mr. Grant
3 manifested, so it -- you really saw both. You saw some things
4 that made sense and you saw other things that were more
5 ridiculously delusional.

6 **Q.** Did you consider any of the statements that Mr. Grant was
7 telling people that the world was coming to an end or
8 disintegrating?

9 **MR. KLUGE:** Objection, Your Honor.

10 **BY MR. COHAN:**

11 **Q.** Did you hear such statements allegedly made by Mr. Grant,
12 or did he make such statements to you?

13 **MR. KLUGE:** Objection, hearsay, Your Honor.

14 **THE COURT:** We're talking about Richard Grant,
15 correct?

16 **MR. COHAN:** Yes, we're talking about Richard Grant.

17 **THE COURT:** Overruled. I'll allow it.

18 **THE WITNESS:** Yes, he did make those statements to
19 me.

20 **BY MR. COHAN:**

21 **Q.** And, again, were those symptomatic of the illness with
22 which you diagnosed him?

23 **A.** Again, Mr. Cohan, there is an difference between an
24 over-valued idea and a delusional idea. And, you know, I took
25 into consideration that many people may believe that the world

1 is coming to an end. And that is not necessarily an
2 over-valued -- I mean, not necessarily delusional idea. It's
3 an over-valued idea?

4 So I separated that out from other patently bizarre ideas
5 that Mr. Grant had, and I act -- talked to his wife about that
6 because I -- because she is also, as I mentioned, a deeply
7 conservative person. And so I asked her where are you along
8 this spectrum to make sure that --

9 **MR. KLUGE:** Objection, Your Honor. Now calls for
10 hearsay.

11 **THE COURT:** Sustained.

12 **MR. COHAN:** Very well. Just one more thing.

13 **Q.** Did you do -- Have you done any work for the San Francisco
14 Police Department?

15 **A.** Yes.

16 **Q.** And what have you done for the San Francisco Police
17 Department?

18 **A.** I do critical incident training.

19 **Q.** And do you get paid \$400 an hour for that?

20 **A.** No.

21 **Q.** Do you get paid at all?

22 **A.** No.

23 **MR. COHAN:** Nothing further. Thank you.

24 **THE COURT:** All right. Any recross?

25 **MR. KLUGE:** Yes, Your Honor.

(Pause in the proceedings.)

RECROSS-EXAMINATION

BY MR. KLUGE:

Q. Dr. Woods, would it change your impression of Mr. Grant's discussions with you regarding an electromagnetic pulse attack if you were to learn that there was an article in *60 Minutes* recently about that?

A. No.

Q. Would it change your understanding of whether or not that is a delusional idea if the Central Intelligence Agency has directed resources to prepare for an electromagnetic pulse attack?

MR. COHAN: Object, lack of foundation for the question.

THE COURT: Overruled.

THE WITNESS: I have a fair amount of experience in that area of electromagnetic pulse attacks, so I'm not -- I'm not poo-pooing the idea. I'm poo-pooing Mr. Grant's representation of the idea.

BY MR. KLUGE:

Q. So it is a legitimate concern that various people in our government and in society in general have about the possibility of an electromagnetic pulse attack; isn't that true?

A. There's always smoke where there's fire, Mr. Kluge. The

1 answer --

2 Q. The answer --

3 A. The answer's yes.

4 Q. The answer's yes, and it's not delusional to be concerned
5 about earthquakes in California; isn't that correct?

6 A. That's correct.

7 Q. You indicated that Mr. Grant made some bad investments in
8 precious metals. Are you aware of the price of gold, sir?

9 A. Not currently. I typically follow it, but I've not --

10 Q. You aware the price of gold has gone up significantly?

11 A. Yes, but --

12 MR. COHAN: Object, lack of foundation. Between when
13 and when, Your Honor.

14 THE COURT: Sustained. Sustained.

15 THE WITNESS: I don't think --

16 THE COURT: Hold on.

17 THE WITNESS: Okay.

18 THE COURT: Sustained the objection. Rephrase the
19 question.

20 BY MR. KLUGE:

21 Q. Are you aware of any increase in the price of gold over
22 the last five years?

23 A. Yes.

24 Q. Okay. So the price of gold has gone up over the last five
25 years, correct?

1 **A.** Yes.

2 **Q.** So if one invested in gold five years ago, that was not a
3 bad investment, correct?

4 **A.** If that's what we were talking about. Yes. That's not
5 what I was talking about.

6 **Q.** You indicated in your report that your findings were
7 preliminary and that further testing was required, correct?

8 **A.** Yes.

9 **Q.** Okay. And you did not do any further testing of
10 Mr. Grant, correct?

11 **A.** With consultation, that's correct.

12 **Q.** So you did not test Mr. Grant in any other way, correct?

13 **A.** With consultation, that's correct.

14 **THE COURT:** I don't know what that means. "With
15 consultation that is correct."

16 **THE WITNESS:** Okay.

17 **THE COURT:** Did you do further testing?

18 **THE WITNESS:** No, Your Honor. After -- After I
19 consulted with other doctors, I did not do any further
20 testing.

21 **THE COURT:** Okay.

22 **BY MR. KLUGE:**

23 **Q.** But you indicate in your report that further testing was
24 required, correct?

25 **A.** At that time, I thought it was, yes.

1 Q. Yes. And you did not do any further testing, correct?

2 A. I think I answered that.

3 THE COURT: You did. Your objection is sustained on
4 your --

5 (Laughter.)

6 THE COURT: Don't make any further ones.

7 MR. KLUGE: May I have a moment, Your Honor?

8 THE COURT: Yes.

9 (Pause in the proceedings.)

10 MR. KLUGE: Thank you, again, Dr. Woods.

11 I have no further questions, Your Honor.

12 THE COURT: All right. Thank you.

13 Anything else, Mr. Cohan?

14 MR. COHAN: No, Your Honor. Thank you very much.

15 THE COURT: All right. Thank you.

16 Dr. Woods may step down, and you can leave all the
17 materials there.

18 THE COURT: All right. Are you ready with your next
19 witness?

20 MR. COHAN: I think so.

21 We should be. Can we have a moment?

22 (Off-the-record discussion.)

23 THE COURT: All right. I think we'll take our
24 15-minute break now, although because one of you was late this
25 morning, we are adding on the additional time at the end of

1 the day. But we'll take the second break now.

2 (Recess taken at 11:56 A.M.; proceedings resumed at 12:13
3 P.M.)

4 (The following proceedings were heard in the presence of
5 the jury:)

6 **THE CLERK:** Please be seated and come to order.

7 **THE COURT:** All right. Mr. Cohan, call your next
8 witness, please.

9 **MR. COHAN:** Yes, Your Honor. The defense calls
10 Peymon Mottahedeh.

11 (Pause in the proceedings.)

12 **PEYMON MOTTAHEDEH,**

13 called as a witness for the DEFENDANT, having been duly sworn,
14 testified as follows:

15 **THE CLERK:** Please step up here and raise your right
16 hand.

17 (Pause in the proceedings.)

18 **THE CLERK:** Please be seated. If you can please
19 state your full name and spell your last name and please speak
20 clearly into the mic.

21 **THE WITNESS:** Peymon Mottahedeh, P-e-y-m-o-n,
22 M-o-t-t-a-h-e-d-e-h.

23 Before we go on, I like to apologize to the court and the
24 jury that I got tooth abscess, so I might look a little bit
25 strange on my left side of my face. So just -- I'm not trying

1 to --

2 (Off-the-record discussion.)

3 **THE WITNESS:** I got a tooth abscess, and I'm on
4 medication. But it will make me probably look a little bit
5 abnormal on the front center of my face, little bit inflamed.

6 **THE COURT:** All right. Thank you.

7 **THE WITNESS:** That's all.

8 **THE COURT:** Mr. Cohan.

9 **MR. COHAN:** Yes.

10 (Off-the-record discussion.)

11 **DIRECT EXAMINATION**

12 **BY MR. COHAN:**

13 **Q.** Mr. Mottahedeh, can you tell us when and where you were
14 born, sir?

15 **A.** Yes, I was born October 9th, 1962 in Teheran, Iran in a
16 Jewish family.

17 **Q.** And when did you first come to the United States?

18 **A.** 1977.

19 **Q.** So you were 14 years old?

20 **A.** Correct.

21 **Q.** And where did you live in the United States beginning in
22 1970- --

23 **A.** -7.

24 **Q.** -7. Sorry. Thank you.

25 **A.** I lived in Southern California.

1 Q. For how long did you live in Southern California after
2 arriving in the United States?

3 A. Until two years ago.

4 Q. And where did you move after that?

5 A. Florida.

6 Q. Okay. Is that where you reside currently?

7 A. Yes.

8 Q. And are you a United States citizen?

9 A. Yes.

10 Q. When did -- when did you become a United States citizen?

11 A. 1989.

12 Q. And how did you do that? What did you have to do to gain
13 your U.S. citizenship?

14 A. Well, I married an American woman. And after we married,
15 we -- I applied for a green card, permanent residency. And
16 after five years of permanent residency, I was allowed to
17 apply to become a United States citizen. And I was allowed to
18 do so, and I had to go to a swearing ceremony in which I had
19 to swear that I uphold and defend the U.S. Constitution.

20 MR. SAMPSON: Objection, Your Honor. This is a
21 narrative.

22 THE COURT: Sustained. Sustained.

23 BY MR. COHAN:

24 Q. So you swore an oath to uphold and defend the United
25 States Constitution.

1 **A.** Yes. And I also had to take a basic test of my knowledge
2 of American government as well.

3 **Q.** Okay.

4 And is English your native language, sir?

5 **A.** No.

6 **Q.** Where did you learn to speak English?

7 **A.** I learned English in the school that I attended in the --
8 the -- the private Jewish school I attended in Teheran, Iran.
9 From the second grade forward, I was taught a second language
10 of English.

11 **Q.** Did you have any experiences in Iran before you left there
12 that made you afraid of government?

13 **MR. SAMPSON:** Objection, Your Honor. relevance.

14 **THE COURT:** Yes. What is the relevance? Of any fear
15 he might have of the Iranian government? This is the United
16 States.

17 **MR. COHAN:** I generalize to "government," Your Honor,
18 because I think fearing one government may be fearing more
19 than just one government.

20 **THE COURT:** Well, I'll give you some --

21 **MR. COHAN:** My psychiatrist is gone.

22 **THE COURT:** I'll give you some leeway to establish a
23 proper foundation.

24 All right. Overruled. Overruled.

25 **THE WITNESS:** Yes.

1 **BY MR. COHAN:**

2 **Q.** And why were you afraid of the Iranian government?

3 **MR. SAMPSON:** Objection. I renew my objection.

4 **THE COURT:** I'm going give him some leeway.

5 All right.

6 **THE WITNESS:** In Iran in 1960's, we do not have such
7 a thing as a freedom of speech. And many of the rights that
8 in America we take it for granted -- so if you were in any way
9 vocal in your criticism of the government's policies or
10 practices, it could be very dangerous where you could be
11 imprisoned without notice and put on summary trial or no
12 trial, no jury of your fellow citizens, tortured, executed.

13 **BY MR. COHAN:**

14 **Q.** That's sufficient.

15 So you got to the United States. You were 14 years old.
16 Did you complete education past high school?

17 **A.** Yes.

18 **Q.** And did you graduate from high school in the United
19 States?

20 **A.** Yes.

21 **Q.** Where did you do that, sir? And what year was it?

22 **A.** I graduated in 1980 from Tustin High School in
23 Orange County in Southern California.

24 **Q.** And did you continue your education to college somewhere?

25 **A.** Yes, I did.

1 Q. Where was that, sir?

2 A. I -- after attending community college, I got my -- my
3 degree in Cal -- California State University at Long Beach in
4 Business Administration.

5 Q. And what year was that?

6 A. I believe that was 1986.

7 Q. And did you continue your education or become employed
8 after your graduation from Long Beach State?

9 A. No more formal education after that. So -- worked and --
10 but I continue always to self-educate myself 'cause I love to
11 read.

12 Q. And what sort of things did you love to read?

13 A. Well, my father had taught me about the importance of
14 education since I was a small child. My father was political
15 in his youth. And I heard him talk to his friends about
16 politics of East, West, America, and the Soviet Union, the
17 Arab/Israeli conflict, the Iranian politics.

18 Q. Forgive me, but my question was what did you read.

19 Are you describing the subject matter that you were
20 reading a lot of?

21 A. I read a lot about politics. I read about health. I read
22 about self-improvement. I learn about success in life. Any
23 area that I could do a self-improvement and -- and empowerment
24 and -- and become more knowledgeable in general. That's why I
25 try to do that on my own.

1 Q. Okay. So were you employed after you graduated for a
2 period of time?

3 A. Yes.

4 Q. And what was your employment?

5 A. Series of jobs I had. I had to run -- deliver business
6 cards one time for a while. I -- Before that, I did about six
7 months of real estate mortgages. I marketed that. Then about
8 seven years of financial planning with -- dealing with
9 insurance and mutual funds, IRA's. Then I had --

10 Q. What years -- What years did you do financial planning?

11 A. From 1984 to about 1991.

12 Q. And then from 1991 after that, what kind of employment did
13 you have?

14 A. I sold medical x-ray film for about a couple -- about
15 couple years. Also on a part-time basis, whenever -- once in
16 a while there would be Persian language interpretation
17 assignments that would come up for either legal proceedings,
18 like court proceedings or -- or depositions or somebody got
19 hurt maybe in a -- a accident, a car accident. They would see
20 a doctor and they would need someone to interpret Persian for
21 them, so I would do that 'cause I was fluent at English and
22 Persian.

23 Q. Have you ever heard of an organization called Freedom Law
24 School?

25 A. Yes.

1 Q. What is Freedom Law School?

2 A. Freedom Law School is part of Freedom Church, which I
3 started both on January 1st, 1996.

4 Q. And since 1996, have you been employed by or associated
5 with Freedom Law School?

6 A. Yes.

7 Q. In what capacity are you employed by or associated with
8 Freedom Law School?

9 A. I'm the founder and president.

10 Q. Okay. Do you know Rick Grant?

11 A. Yes.

12 Q. Do you see him here in the courtroom?

13 A. Yes.

14 Q. Can you identify him for me?

15 A. The gentleman over there with the blue tie.

16 Q. Let the record reflect that this witness identified Rick
17 Grant.

18 When did you first meet Rick Grant?

19 A. May 2003.

20 Q. And had you ever had any encounter with Mr. Grant before
21 May 2003?

22 A. I believe I had briefly met him in San Jose at an event of
23 another organization that was on the weekend of July 4th of
24 2002.

25 Q. Okay. And what was the nature of your interaction with

1 Mr. Grant in May of 2003?

2 **A.** I was a speaker at that event. And so as a speaker,
3 you're also provided a table for your organization for people
4 to meet you, talk with you, ask you further questions. And so
5 he's one of the people that I had contact at that event.

6 **Q.** And did you -- Strike that.

7 Did Mr. Grant join your organization in some form or
8 fashion?

9 **A.** Yes.

10 **Q.** And may you -- Do you have your exhibit book up there?

11 **A.** Yes.

12 **Q.** Okay. Inviting your attention if I may to what's been
13 marked for purposes of identification as Exhibit 514.

14 Do you have that before you?

15 **A.** Yes.

16 **Q.** Do you recognize that document?

17 **A.** Yes.

18 **Q.** What is that?

19 **A.** This is a Royal Freedom Package renewal notice that
20 Freedom Law School send to Mr. Grant.

21 **Q.** And are you the person responsible for sending this
22 document to Mr. Grant?

23 **A.** Yes.

24 **Q.** Is that your signature at the bottom of the page?

25 **A.** Yes.

1 Q. And what does this document reflect with respect to the
2 relationship, if any, between Freedom Law School and Rich and
3 Carol Grant of Richmond, California?

4 A. Well, it speaks of the fact that the Grants have been for
5 three years members of the Royal Freedom Package program, and
6 it tells a little bit about the purpose of the fund, the
7 program and what it provides, what kind of benefits it
8 provides the members.

9 Q. And did you receive payments from Rich and Carol Grant
10 beginning in May of 2003 and continuing through March 28th of
11 2006, which is the date on Exhibit 514?

12 A. Yes.

13 MR. COHAN: Your Honor, I'd move admission of Exhibit
14 514 at this time so I can inquire into the contents.

15 THE COURT: Any objection?

16 MR. SAMPSON: No, Your Honor.

17 THE COURT: All right. Admitted.

18 (Defendant's Exhibit 514 received in evidence)

19 MR. COHAN: Your Honor, may I display this to the
20 jury?

21 THE COURT: Yes.

22 (Exhibit published.)

23 MR. COHAN: Okay. Let me just adjust it if I may.

24 Q. You have it before you, sir?

25 A. Yes.

1 Q. Okay.

2 So this indicates that as of March --

3 THE COURT: Hold on. Hold on. It's not being
4 displayed --

5 MR. COHAN: Oh, I'm sorry.

6 THE COURT: -- on the screen.

7 (Off-the-record discussion.)

8 THE COURT: Is the jury's monitors working?

9 JURORS: Yes.

10 THE COURT: Pardon me?

11 A JUROR: Is there a possible way it can be zoomed
12 in? Kind of can see in the back row. Can it be zoomed in?
13 Can you make it bigger?

14 MR. COHAN: You tell me when.

15 MR. SAMPSON: Your Honor, there's some writing on the
16 version that Mr. Cohan is using that's not on government's.

17 THE COURT: Or mine.

18 MR. COHAN: My bad. I put --

19 THE COURT: You need a clean version.

20 MR. COHAN: I put that on there.

21 THE COURT: You need a clean version.

22 MR. COHAN: I -- I apologize. But the only thing --

23 THE COURT: Here. Here. You could just switch it
24 with me.

25 MR. COHAN: Okay. Thank you, Your Honor. Sorry.

(Off-the-record discussion.)

BY MR. COHAN:

Q. So you sent this letter to Rich and Carol Grant at the address indicated on there on about March the 28th, 2006; is that right?

A. Yes.

Q. Okay. And it states here that they have made it through the third year of membership and they paid \$6,000 membership dues and renewal dues are \$2500 a year.

So how much money had they paid you as of March 28th, 2006?

A. That will -- 11,000.

Q. Okay. Inviting your attention down to roughly the middle of the page, it says, "unlimited consultation by telephone about your IRS or state income tax issues."

Do you see that?

A. Yes.

Q. Is that something that you provided to Rick Grant beginning in sometime in 2003?

A. Yes.

Q. And did you have telephone conversations with Mr. Grant beginning in 2003 and continuing for at least the next ten years?

A. Yes.

Q. Do you know how many telephone conversations you had

1 with Mr. Grant during that ten-year period approximately?

2 **A.** Probably a few dozen.

3 **Q.** A few dozen?

4 **A.** Yes.

5 **Q.** Okay. It's -- When you say, "unlimited consultation by
6 telephone about your IRS or state income tax issues," did
7 Mr. Grant provide you with documents he received from the IRS
8 and the California Franchise Tax Board?

9 **A.** Yes.

10 **Q.** And did you consult with him about how to address the
11 contents of those documents that were forwarded to you that he
12 received from the IRS and the FTB?

13 **A.** Yes.

14 **Q.** The next thing that it states is No. 2, full
15 representation by qualified paralegals, attorneys, or other
16 professionals for any and all IRS and State income tax agency
17 administrative issues, including all -- a) all letters and
18 correspondence between you and the IRS or state income tax
19 agencies.

20 Did you provide full representation by qualified
21 paralegals, attorneys, or other professionals to Mr. Grant for
22 his IRS and state income tax agency administrative issues?

23 **A.** Whenever needed, I provided the -- if necessary, full
24 representation. But oftentime, representing is not necessary
25 or too expensive so an -- in those cases, which was most

1 often, I wrote the letters for him and he signed and mailed
2 them out himself.

3 **Q.** Okay. We will get to some of those letters in just a few
4 minutes.

5 **A.** Um-hmm.

6 **Q.** Did you also provide services including responding to IRS
7 or other summonses and hearings and tax court work for the IRS
8 and the FTB?

9 **A.** Yes.

10 **Q.** And was that throughout the entire period?

11 **A.** Whenever needed, yes.

12 **Q.** Okay.

13 And c), full representation for non-filing criminal tax
14 charges pretrial, trial, and appeals all the way up to the
15 U.S. Supreme Court and conditional representation for years
16 that you have filed a 1040 income tax confession form?

17 **MR. SAMPSON:** Objection, Your Honor. That's a
18 leading question.

19 **THE COURT:** I don't even think it was a question.
20 Had you finished?

21 **MR. COHAN:** Not really. I was asking really whether
22 he had provided such representation to Mr. Grant as identified
23 in sub c just like a and b.

24 **THE COURT:** All right. Overruled. He may answer.

25 **THE WITNESS:** Could you repeat your question, please.

1 **BY MR. COHAN:**

2 **Q.** Yes. Just inviting your attention to --

3 **A.** Oh.

4 **Q.** -- to subsection C, full representation, et cetera, so I
5 don't have to read the whole thing. The jury can see it.

6 **A.** Um-hmm.

7 **Q.** Did you provide any services to Mr. Cohan in connection
8 with his criminal tax charges that we're here on pretrial?

9 **A.** Yes, I did -- I did consult with him on that area, yes.

10 **Q.** Okay. Have I ever paid you any money for anything, sir?

11 **A.** Just a \$40 witness fee that's required by law to be a
12 witness.

13 **Q.** Right. So you received a subpoena that we have had served
14 on you; is that correct?

15 **A.** Correct.

16 **Q.** Okay. Other than that, have I ever provided you with any
17 valuable consideration of any type whatsoever.

18 **A.** No.

19 **Q.** Have I ever represented you?

20 **A.** No.

21 **Q.** Have I any association whatsoever with Freedom Law School?

22 **A.** No.

23 **Q.** Are you in any way providing support to me or paying for
24 any of Rick Grant's legal service that I been providing since
25 I entered my appearance in this case?

1 **A.** No.

2 **Q.** Now, let's look at the rest of this before we move to the
3 next exhibit. You represent to the Grants, quote, in short,
4 you have obtained a peace of mind package that allows you to
5 spend your time on the other areas of your life while we make
6 sure that you are well protected from the insidious attacks of
7 IRS or State income tax agencies so that you can enjoy your
8 life with reassurance and free of fear.

9 Did you write that?

10 **A.** Yes.

11 **Q.** And is that what you provided to Mr. and Mrs. Grant?

12 **A.** To the best of my ability, yes.

13 **Q.** Now, inviting your attention back up above that to full
14 representation for non-filing criminal charge -- excuse me --
15 criminal tax charges, pretrial, trial and appeals all the way
16 up to the U.S. Supreme Court?

17 **A.** Uh-huh.

18 **Q.** And conditional representation for years that you have
19 filed 1040 income tax confession form. Is that a
20 typographical error?

21 **A.** No, that's correct.

22 **Q.** So the word "not" should be in there.

23 **A.** No, no. Actually it is correct. It's -- covers
24 non-filing 1040 -- and under with some conditions, if the
25 person files also, so whether a person files or doesn't file

1 the person, you know, either way could be assisted and
2 represented.

3 **Q.** So it is your position -- Strike that.

4 Freedom Law School considers 1040 form a confession form;
5 is that right?

6 **MR. SAMPSON:** Objection, Your Honor. "Freedom law
7 school considers"?

8 **THE COURT:** Yeah. Sustained. Ask this witness --

9 **MR. COHAN:** Okay.

10 **Q.** Do you speak for Freedom Law School, sir?

11 **A.** Yes.

12 **Q.** So is it your position that the 1040 income tax form is a
13 confession form?

14 **A.** Yes.

15 **MR. SAMPSON:** Objection, Your Honor. Calls for --
16 It's argumentative, calls for speculation. It's -- it's an
17 argumentative question, "the confession form."

18 **THE COURT:** I don't think it's either argumentative
19 or calls for speculation. Those aren't appropriate
20 objections.

21 I'm going to allow it. Go ahead.

22 **MR. COHAN:** Thank you.

23 **THE WITNESS:** Could you repeat the question, please.

24 **BY MR. COHAN:**

25 **Q.** Yes. Do you consider 1040 income tax returns to be

1 confession forms, as stated here on Exhibit 514?

2 **A.** Yes.

3 **MR. SAMPSON:** Objection based on relevance, Your
4 Honor, and it also calls for a legal conclusion.

5 **THE COURT:** That's the problem that I'm anticipating.

6 **BY MR. COHAN:**

7 **Q.** I'm not asking for legal conclusions, only your own
8 personal conclusions sir.

9 Do you understand that?

10 **THE COURT:** Okay.

11 **MR. SAMPSON:** And not relevant.

12 **THE COURT:** I'm going to allow it given the document
13 and in the document uses the language. I'd like to hear what
14 he has to say about it.

15 Overruled.

16 (Pause in the proceedings.)

17 **MR. COHAN:** Bear with me if you would, for just a
18 moment, Your Honor, ladies and gentlemen.

19 (Pause in the proceedings.)

20 **BY MR. COHAN:**

21 **Q.** Sir, do you have Exhibit 515 before you?

22 **A.** Yes.

23 **Q.** Next tab. Do you recognize that document?

24 **A.** Yes.

25 **Q.** Does it reflect basically the same content as the previous

1 Exhibit 514 except the date is March the 6th of 2008?

2 **A.** Yes.

3 **Q.** Is that your signature at the bottom?

4 **A.** Yes.

5 **Q.** Did you send this letter to Rick and Carol Grant on about
6 March the 6th of 2008?

7 **A.** Yes.

8 **Q.** And did you continue to provide services in exchange for
9 being paid as indicated on Exhibit 515 by Mr. Grant?

10 **A.** Yes.

11 **MR. COHAN:** Your Honor, I move admission of Exhibit
12 515.

13 **THE COURT:** Any objection?

14 **MR. SAMPSON:** No, Your Honor.

15 **THE COURT:** Admitted.

16 (Defendant's Exhibit 515 received in evidence)

17 **MR. COHAN:** Okay. May I publish this, Your Honor?

18 **THE COURT:** Yes.

19 **MR. COHAN:** Thank you.

20 (Exhibit published.)

21 **BY MR. COHAN:**

22 **Q.** I believe you testified in response to my question about
23 the previous Exhibit 514 that the Grants had paid you \$11,000
24 as of May the 2nd of 2006.

25 So does this letter indicated that they have paid you

1 another \$6,000 as of March 6th, 2008?

2 **A.** Indicates they paid for two years of membership during
3 that time. And the membership was 2500, and this was the
4 first year went up to 3,000, so they paid 5,000 more.

5 **Q.** Okay. So that means they had paid you \$16,000 by this
6 time?

7 **A.** Yes.

8 **Q.** Okay. And you were performing services for the Grants
9 including all those services that we just reviewed on this
10 Exhibit 515, the same as on 514, correct?

11 **A.** Yes.

12 **Q.** Okay.

13 (Pause in the proceedings.)

14 **BY MR. COHAN:**

15 **Q.** Let me invite your attention to Exhibit 516, sir.

16 **A.** (Reviewing document.)

17 **Q.** Do you have that before you?

18 **A.** Yes.

19 **Q.** Do you recognize that document?

20 **A.** Yes.

21 **Q.** Does it appear to be essentially the same as the two
22 previous exhibits except for the date on it and the dollar
23 amounts having changed?

24 **A.** Yes.

25 **Q.** And does it promise to provide the same services

1 essentially that we've discussed in the previous two exhibits?

2 **A.** Yes.

3 **Q.** And what's the date on this letter, sir?

4 **A.** March 8, 2012.

5 **Q.** And did you send this letter to Richard and Carol Grant?

6 **A.** Yes.

7 **MR. COHAN:** Move the admission of Exhibit 516, Your
8 Honor.

9 **THE COURT:** Any objection?

10 **MR. SAMPSON:** None, Your Honor.

11 **THE COURT:** Admitted.

12 (Defendant's Exhibit 516 received in evidence)

13 **MR. COHAN:** May I display?

14 **THE COURT:** Yes.

15 (Exhibit published.)

16 (Pause in the proceedings.)

17 **MR. COHAN:** Not sure the jurors can see it.

18 (Exhibit published.)

19 **MR. COHAN:** Okay.

20 **Q.** Inviting your attention to Exhibit 517, do you recognize
21 that document?

22 **A.** Yes.

23 **Q.** What is that, sir?

24 **A.** It's a statement showing that Mr. Grant had paid his
25 membership renewal of \$3500 on April 18, 2010.

1 Q. Okay. So by this time, the Grants have paid you \$18,500?

2 A. In that neighborhood.

3 Q. Okay.

4 A. Yes.

5 Q. Close enough?

6 A. Close --

7 Q. Okay.

8 Move the admission of Exhibit 517, Your Honor.

9 THE COURT: Any objection?

10 MR. SAMPSON: None, Your Honor.

11 THE COURT: Admitted.

12 (Defendant's Exhibit 517 received in evidence)

13 MR. COHAN: May I display it?

14 THE COURT: Yes.

15 (Exhibit published.)

16 MR. COHAN: May I display it?

17 THE COURT: Yes. Yes. Yes. It's already displayed.

18 MR. COHAN: Oh.

19 Thank you, Your Honor. Okay.

20 Q. It's a two-page exhibit. Let's look at the second page
21 that looks very much like the previous page.

22 (Exhibit published.)

23 BY MR. COHAN:

24 Q. This just shows that now they paid -- now being as of
25 when, sir, did they make yet another payment?

1 **A.** As of April 13, 2012.

2 **Q.** So now, we're up to them having paid you, what, \$22,000,
3 give or take?

4 **A.** Approximately.

5 **Q.** Okay. Inviting your attention to Exhibit 518, do you
6 recognize that document?

7 **A.** Yes.

8 **Q.** And what is that document?

9 **A.** It's the cover page of a course which I provide all of our
10 students like Mr. Richard Grant who are interested in learning
11 about the law, the U.S. Constitution, and their rights.

12 **MR. SAMPSON:** Objection, Your Honor. He's testifying
13 in a narrative about what Mr. Grant was interested in.

14 **THE COURT:** Overruled. He's just describing what
15 this is.

16 Go ahead.

17 **BY MR. COHAN:**

18 **Q.** So did you provide this level one course to Mr. Grant by
19 sending it to him in the mail or some other carrier to get it
20 delivered to him at either 13 -- I guess 1306 Sanderling
21 Island, or do you know?

22 **A.** Yes.

23 **Q.** Okay. Let me just double-check. Well, the address is a
24 P.O. Box, but did Mr. Grant acknowledge that he received
25 the -- the actual package that we have a photocopy of the

1 cover page?

2 **A.** Yes.

3 **Q.** Okay.

4 Now, this is just for purposes of identification, Your
5 Honor. I'm not going to try and introduce this, but I do want
6 the jury to see what it was that was actually provided to
7 Mr. Grant.

8 **MR. SAMPSON:** I'm not sure that's proper to show the
9 jury something but not offer it into evidence.

10 **THE COURT:** It's not.

11 **MR. COHAN:** Fine. I'll offer it into evidence.

12 **THE COURT:** What's wrong with the copy that's in the
13 binder?

14 **MR. COHAN:** Well, they're just photocopies of the
15 CD's, Your Honor.

16 **THE COURT:** Oh, I see.

17 **MR. COHAN:** The CD's are the actual content that was
18 sent to Mr. Grant. We just made a picture of the cover.

19 **THE COURT:** Okay. And --

20 **MR. COHAN:** That's 518.

21 **THE COURT:** 518. I think it's perfectly fine. Yes,
22 you can show it to the jury.

23 **MR. COHAN:** Very well. So I'm not going to move this
24 into evidence, but I do want to ask this witness what it
25 consists of.

1 **THE COURT:** Okay.

2 **MR. COHAN:** Okay.

3 **Q.** So, Mr. Mottahedeh, I see disks with a picture of your
4 face on them. And I see four, eight, oh, wow, they're double
5 sided. How many of these disks did you send to Mr. Grant in
6 total?

7 **A.** There is --

8 (Simultaneous colloquy.)

9 **BY MR. COHAN:**

10 **Q.** Are there 19 in total, sir?

11 **A.** Yes.

12 **Q.** And do they each contain different material?

13 **A.** Yes.

14 **Q.** And can you basically summarize what the material is
15 looking at the -- the first CD, it says, quote, a course in
16 law and procedure, level one, class one.

17 **MR. SAMPSON:** Objection to the extent it calls for
18 hearsay, Your Honor, about what's on the CD's themselves.

19 **THE COURT:** Overruled.

20 **BY MR. COHAN:**

21 **Q.** Are you responsible for the content of what's on these
22 CD's, sir?

23 **A.** Yes.

24 **Q.** And have you ever attended law school?

25 **A.** No.

1 Q. Have you consulted with any attorneys or C.P.A.'s to
2 contain any insight into the law that you were supposedly
3 teaching people who listened to these CD's?

4 MR. SAMPSON: Objection, Your Honor, relevance as to
5 the consultation. What matters is what Mr. Grant knew.

6 THE COURT: True. But this is -- I assume you're
7 setting up a basis for the package that was sent.

8 MR. COHAN: Yes.

9 THE COURT: Okay. I'm going to allow it. Go ahead.

10 BY MR. COHAN:

11 Q. Well, you made representations in the exhibits that we saw
12 that services were being provided by Freedom Law School,
13 including attorneys, qualified paralegals, and so on, correct?

14 A. Correct.

15 Q. Did you actually get information from attorneys, C.P.A.'s
16 and qualified paralegals?

17 A. Yes.

18 Q. Can you identify by name of attorneys who provided you
19 information, some of which you say is on these CD's?

20 MR. SAMPSON: Objection, Your Honor, relevance,
21 bolstering.

22 THE COURT: Well, as to relevance, sustained. The
23 names of attorneys who provided information is totally
24 irrelevant.

25 MR. COHAN: Very well.

1 Q. Where did you get the material that you have included on
2 these CD's?

3 I see the same description, a course in law and procedures
4 and class one, class two, class three, class four. How many
5 class were there in law and procedure that you were providing
6 to Mr. Grant and presumably other people?

7 A. There's actually nine classes. And there is a -- just
8 one-page sheet on back of the cover of the courses. The front
9 that you showed me in the first -- on the first page.

10 But the back page has a short description of each of those
11 nine classes. Eight of them are on audio. Approximately two
12 hours and forty minutes each. One of them is a video about an
13 hour and a half. And then there's approximately 200 pages of
14 paperwork that's on the -- one of these CD's that a person can
15 print out from their own personal computer.

16 Q. So do you have any knowledge one way or another whether
17 Mr. Grant ever listened to or watched any of these CD's?

18 A. Nope, 'cause I don't know if he -- how much of it he
19 listened at this time. That's up to the person to do it.

20 Q. Now, were there different types of membership in Freedom
21 Law School other than what was referred to on the letters as
22 the Freedom -- excuse me -- Royal Freedom Package, was it?

23 A. Yes.

24 Q. And what was the Royal Freedom Package as opposed to some
25 other package?

1 **A.** It's the most comprehensive program because, for example,
2 this course by itself is an entire course, over 20 hours long
3 about the law and your rights. So someone wants to just get
4 started with that, they going to get a great amount of
5 information that they were not taught in high school or
6 university about the law and their rights.

7 So there were other courses that I've put together myself
8 with -- myself or with assistance of others, which I -- as I
9 learned more law, I put those courses and audio available for
10 others as well.

11 So there's different courses that over the years, I
12 developed and made available.

13 **Q.** Did -- Now, when we went through some of those exhibits,
14 you described in them the services that were provided to
15 Mr. and Mrs. Grant involving your providing written material
16 for Mr. Grant simply to sign and submit to the IRS, the FTB,
17 the tax court, and so on; is that right?

18 **A.** Yes.

19 **Q.** Could people buy the material and pay less money and not
20 pay for you providing those services?

21 **A.** Yes. They could just simply just get the courses to
22 educate themselves, if you get this or other courses alone
23 without any assistance or representation or consultation
24 provided.

25 **Q.** Okay. Inviting your attention to Exhibit 522, do you

1 recognize that?

2 **A.** Yes.

3 **Q.** What is that?

4 **A.** This is a book written by one of my students.

5 **Q.** And what's the name of this student?

6 **A.** Joseph R. Bannister.

7 **Q.** And who is Joseph R. Bannister, sir?

8 **A.** He was a gun-carrying special agent with the IRS's
9 criminal investigation division.

10 **Q.** And where was he an IRS agent, if you know?

11 **A.** In San Jose, California.

12 **Q.** And when was he an IRS agent in San Jose, California?

13 **A.** I believe from 1995 to 1999.

14 **Q.** Okay. And do you know whether Mr. Bannister was also a
15 Certified Public Accountant?

16 **A.** Yes, he was.

17 **MR. SAMPSON:** Your Honor, I'm not sure of the
18 relevance of all of this discussion of someone else,
19 Mr. Bannister.

20 **THE COURT:** Well, we'll see where it's going.
21 Overruled.

22 **BY MR. COHAN:**

23 **Q.** And to your knowledge, did Mr. Bannister create what has
24 been marked for purposes of identification as Exhibit 522?

25 **A.** Yes, he wrote this book.

1 Q. And what is this -- Well, first of all, did you send a
2 copy of this book to Mr. Grant as part of his Royal Freedom
3 Package?

4 A. Yes.

5 Q. And did you also send him video of Mr. Bannister
6 describing the contents of this book?

7 A. Yes.

8 Q. And did you send him other videos in -- I'll just stick
9 with that one. Did you send him other videos?

10 A. Yes.

11 Q. What other videos did you send to Mr. Grant?

12 A. Besides --

13 Q. Besides the -- Excuse me.

14 Besides the one we just referred to in which
15 Mr. Bannister, basically tells the story of --

16 MR. SAMPSON: Objection --

17 BY MR. COHAN:

18 Q. -- 522.

19 MR. SAMPSON: -- misstating testimony.

20 THE COURT: Yeah, you can't tell us what's in the
21 book, counsel. Objection's sustained.

22 BY MR. COHAN:

23 Q. Mr. Mottahedeh, what are the contents of the book, Exhibit
24 522?

25 A. The content of the book, which I edited, is

1 Mr. Bannister's research on the subject of the legality of the
2 income tax.

3 Q. Okay. And you distributed that to Mr. Grant as part of
4 his Royal Freedom Package; is that right?

5 A. Yes.

6 Q. When was this book written, if you know?

7 A. It was -- started in 1998 and ended very early, 1999.

8 Q. When you say "ended," do you mean it was completed?

9 A. Completed, yes.

10 Q. Now, it says it's a preliminary report. Do you see that?

11 A. Yes.

12 Q. Was it ever modified such that it became anything other
13 than a preliminary report?

14 A. No.

15 Q. Okay.

16 MR. COHAN: Your Honor, I move the admission of
17 Exhibit 522.

18 MR. SAMPSON: Your Honor, this exhibit is not
19 relevant at this time. And there's no foundation of whether
20 the defendant relied on it.

21 THE COURT: Yeah, it would have to come in through
22 the defendant's testimony, not through the witness.

23 MR. COHAN: I agree. I withdraw it.

24 THE COURT: Okay.

25 MR. COHAN: Trying to do too much too quick.

1 Q. Sir, do you have Exhibit 106 before you?

2 A. (Reviewing document.)

3 Yes.

4 Q. Do you recognize Exhibit 106?

5 A. Yes.

6 Q. What is Exhibit 106?

7 A. It's a "Request for a Collection Due Process Hearing,"
8 which basically what that is, when the IRS wants to enforce
9 collection by force before --

10 MR. SAMPSON: Your Honor, I -- I object. He's
11 describing what IRS does. He's not describing the document.

12 THE COURT: Sustained. Moreover, you described the
13 Exhibit as G -- as 106 when in facts, this is G106. We
14 already have a 106.

15 MR. COHAN: Oh, this one's in evidence.

16 THE COURT: 106?

17 MR. COHAN: Yes, it is.

18 THE COURT: Why is it marked differently then?

19 MR. COHAN: It's marked 106. We just forgot to put
20 the "G" on it, Your Honor.

21 THE COURT: What's -- The original one that was
22 already admitted was simply 106.

23 MR. COHAN: Right. And it's in evidence.

24 THE COURT: This one is marked as "G106."

25 MR. COHAN: Oh, well mine's marked as just 106, Your

1 Honor.

2 **THE COURT:** Okay.

3 **MR. COHAN:** I'm sorry.

4 **THE COURT:** Okay.

5 **MR. COHAN:** I think we've stuck "G" only there so
6 that we're reminding ourselves that it's a Government's
7 Exhibit.

8 **THE COURT:** All right. So that we just strike the
9 "G's" on these?

10 **MR. COHAN:** Please feel free. They're not informing
11 anybody of anything that we don't already know.

12 **THE COURT:** Okay.

13 **MR. COHAN:** So this is in evidence. So if I may, I'd
14 like to display it to the jury.

15 (Exhibit published.)

16 **BY MR. COHAN:**

17 **Q.** So, Mr. Mottahedeh, when did you first see the original of
18 which this 106 is a copy, if you know?

19 **A.** (Reviewing document.)

20 I saw this document -- Let's see. He was signed -- Let me
21 see.

22 (Reviewing document.)

23 About September 2005.

24 **Q.** And do you know who wrote the statement, quote, I am
25 requesting for a collection due process hearing in an appeals

1 office closest to my place of residence. This is also to
2 inform you that I will be audio recording this hearing. One
3 of the issues we will address is if the IRS follows proper
4 procedure. If the IRS has considered any of my prior issues
5 that I've raised in the past to be frivolous, I hereby
6 renounce them.

7 Do you know who wrote those words?

8 **A.** Yes, I did.

9 **Q.** Okay. And did you send this to Mr. Grant for him to sign
10 and send to the IRS?

11 **A.** Yes.

12 **Q.** Okay.

13 Inviting your attention to Exhibit 108, do you recognize
14 Exhibit 108?

15 **A.** Yes.

16 **MR. COHAN:** I believe this one is also in evidence,
17 Your Honor. And if there's a "G" in front of the "108," I
18 apologize.

19 **THE COURT:** We'll ignore it.

20 **MR. COHAN:** I'm sorry?

21 **THE COURT:** We will ignore the "G."

22 **MR. COHAN:** Thank you.

23 (Exhibit published.)

24 **BY MR. COHAN:**

25 **Q.** Now, sir, I want to ask you if you recognize this exhibit

1 that's been marked 108?

2 **MR. SAMPSON:** Your Honor, again, there's highlighting
3 on his version.

4 **THE COURT:** All right. Yes, counsel. You have to
5 show clean copies to the jury.

6 **MR. COHAN:** I apologize.

7 **THE COURT:** Do you want my copy?

8 **MR. COHAN:** I'll be happy to switch with you, Judge.
9 Excuse me.

10 (Pause in the proceedings.)

11 **BY MR. COHAN:**

12 **Q.** Sir, do you see that this is a four-page letter?

13 **A.** Yes.

14 **Q.** Is that what's before you?

15 **A.** Yes.

16 **Q.** And do you know who actually wrote this letter?

17 **A.** I wrote it.

18 **Q.** Okay. And did you write it sometime in early November of
19 2005?

20 **A.** Yes.

21 **Q.** Was it written in response to a letter that you received
22 from Mr. Grant who had received it, as far as you know, from
23 someone named Ms. Cahill at the Internal Revenue Service?

24 **A.** Yes.

25 **Q.** And so you were responding on behalf of Mr. Grant for him

1 to adopt and sign and send this to the IRS; is that right?

2 **A.** Yes.

3 **MR. SAMPSON:** Objection, Your Honor. It's
4 argumentative.

5 **THE COURT:** No. it's not. It's leading, but it's not
6 argumentative. Overruled.

7 **BY MR. COHAN:**

8 **Q.** And can you summarize the contents of this Exhibit 108
9 without going through all four pages since it's in evidence
10 and the jury can read it if they want to?

11 **A.** Well, let me refresh myself, please --

12 **Q.** Please --

13 **A.** -- for a minute.

14 **Q.** -- take your time and review it, and then let us know when
15 you're ready to, if you can, summarize your letter.

16 Basically, what was the purpose of the letter, is the
17 question?

18 **A.** The purpose of the letter is to challenge legally,
19 properly, challenge the tax amount that IRS claims that
20 Mr. Grant owes.

21 **Q.** And this is for the years 2001 and 2002?

22 **A.** Yes.

23 **Q.** Okay.

24 I want to just invite your attention the last page. Do
25 you see where Mr. -- well, it appears that someone has signed

1 above "Richard Grant" and dated it. Correct?

2 **A.** Yes.

3 **Q.** I want you to take look at how this letter ends. The last
4 two sentences are, quote, there is an unwritten law that
5 allows at least 30 days between correspondences. Even the
6 courts take into consideration any possible delays or
7 unforeseen incidents which may affect the flow of
8 correspondence.

9 **MR. SAMPSON:** Your Honor, I object to the extent it's
10 admitted for the truth.

11 **THE COURT:** The document's already in evidence.
12 Counsel's just reading a document that's in evidence.

13 **BY MR. COHAN:**

14 **Q.** Do you see that language?

15 **A.** Yes.

16 **Q.** And you wrote that language, correct?

17 **A.** Yes.

18 **Q.** Okay. Now, I -- did you -- want to invite your attention
19 to Government -- Excuse me. Got to get that "G" out of
20 there -- exhibit 111, sir.

21 **A.** (Reviewing document.)

22 Yes. 111.

23 (Simultaneous colloquy.)

24 **THE WITNESS:** Or 110?

1 **BY MR. COHAN:**

2 **Q.** No, no. 111. We'll go back to 110.

3 **A.** Okay. Yes.

4 **Q.** I'm going to ask you to perform a comparison in a moment.

5 **THE COURT:** Is this one already in?

6 **MR. COHAN:** I believe 111 is in, yes.

7 **THE COURT:** All right. All right.

8 **BY MR. COHAN:**

9 **Q.** So I'm inviting your attention to the third page of this
10 exhibit. Do you see that? Do you see the third page?

11 **A.** (Reviewing document.)

12 Hmm, one, two -- yes.

13 **Q.** And that page has a heading "Attachment Letter 3193 Notice
14 of Determination" at the top?

15 **A.** Yes.

16 **Q.** Does this look like a letter from the IRS of a type you
17 have previously seen?

18 **A.** Yes.

19 **Q.** And inviting your attention to the last line, it says,
20 "Appeals received a letter from the taxpayer which stated the
21 following."

22 And did you send -- strike that.

23 Did Mr. Grant send Exhibit 108 to Appeals to the best of
24 your knowledge?

25 **MR. SAMPSON:** Objection, lacks personal knowledge.

1 **THE COURT:** Well, he's asking him if he has
2 knowledge. He may answer if he has personal knowledge.

3 **THE WITNESS:** Yes, he did.

4 **BY MR. COHAN:**

5 **Q.** Okay. It was addressed to --

6 **THE COURT:** Well, excuse me. Now you have to
7 establish how he knows that.

8 **MR. COHAN:** Okay.

9 **Q.** If you look at the first page of Exhibit 108, to whom is
10 it addressed?

11 **A.** (Reviewing document.)

12 Exhibit 108 is addressed to the Internal Service (sic),
13 attention Colleen Cahill in San Jose.

14 **Q.** Right. But just above -- "Attention Colleen Cahill," does
15 it say, "San Jose Appeals"?

16 **A.** Yes.

17 **Q.** Okay. So it was addressed to Appeals. Is it fair to say,
18 to the best of your knowledge and belief, Mr. Grant sent it
19 there at your direction?

20 **A.** Yes, and he sent me a signed copy of that for my records.

21 **Q.** Okay. Now, inviting your attention to the third page of
22 Exhibit 111 where it says "Appeals received a letter from the
23 taxpayer which stated the following."

24 Look at the next page, page 4 of Exhibit 111. Do you see
25 that?

1 **A.** Yes.

2 **Q.** Have you made a comparison between what appears on page 4
3 through page 7 to see whether it's a verbatim copy,
4 essentially, of Exhibit 108, the letter that we just saw
5 that's been admitted as 108?

6 **A.** I'm sorry. Could you go over that little bit more slowly
7 so I can do that proper -- properly?

8 **Q.** Yes. I thought you had done this previously, but I'm
9 going to ask you. Can you compare Exhibit 111 beginning at
10 page 4 with the entirety of Exhibit 108, which is a letter you
11 said you prepared and that Rick Grant sent to Appeals.

12 **A.** Yes.

13 **Q.** Okay. Can you do that? Can you compare this four-page
14 letter to see that it's essentially a verbatim copy of the
15 letter that you prepared and that Mr. Grant sent to IRS
16 Appeals on or about November the 9th, 2005?

17 **A.** Yes.

18 **Q.** Inviting your attention to the seventh page of Exhibit
19 111, do you see the third paragraph on that page that is the
20 last paragraph of Exhibit 108 duplicated?

21 **A.** Yes.

22 **Q.** The letter that you prepared for Mr. Grant ends with the
23 sentence, quote, even the courts take into consideration any
24 possible delays or unforeseen incidents which may affect the
25 flow of correspondence, correct?

1 **A.** That's right.

2 **Q.** If you look at Exhibit 111, do you see that someone from
3 the IRS has added the words, quote, if the IRS chooses to
4 continue to disregard their own rules and procedures, then I
5 will be forced to seek litigations, end quote?

6 **MR. SAMPSON:** Your Honor, counsel's reading, and the
7 document does speak for itself. It's in evidence.

8 **THE COURT:** Sustained.

9 **BY MR. COHAN:**

10 **Q.** Sir, your letter doesn't contain such a statement as is
11 attributed to your letter right here on this page, does it?

12 **A.** No, my letter does not say that.

13 **Q.** And do you know how or why the IRS added these words,
14 quote, if IRS chooses to continue to disregard their own rules
15 and procedures, then I will be forced to seek litigations?

16 **A.** I had no idea why they would make it up.

17 **Q.** But you didn't put it in your letter, did you?

18 **A.** No, my letter does not say that.

19 **Q.** Nor does the letter that Mr. Grant signed that you
20 provided, correct?

21 **A.** Yes, that's right. The letter doesn't have that language.

22 **Q.** Thank you.

23 Now we can go back to Exhibit 110. Inviting your
24 attention to Exhibit 110, do you recognize it?

25 **A.** Yes.

1 Q. It purports to be a letter from Richard Grant dated March
2 15, 2006, right?

3 A. Yes.

4 Q. Did you write that letter, and did you provide it to
5 Mr. Grant for him to submit to the IRS?

6 A. Yes.

7 Q. Okay. Thank you.

8 Inviting your attention Exhibit 112, do you see that?

9 A. Yes.

10 Q. And what is Exhibit 112?

11 A. It's a -- a petition to the United States Tax Court.

12 Q. Okay.

13 Bear with me, Your Honor, just a moment if you would.
14 Unfortunately, my copies of things have highlighting on them,
15 so I don't want to put them on the ELMO. I don't really mind,
16 but court has ruled that's inappropriate --

17 THE COURT: Well, it's not the highlighting so much
18 as the annotations in the margins. Here's 112, if you wish, a
19 clean copy.

20 MR. COHAN: Thank you.

21 (Pause in the proceedings.)

22 MR. COHAN: Thank you.

23 (Pause in the proceedings.)

24 MR. COHAN: Okay. Now may I publish, Your Honor?

25 THE COURT: Yes.

1 **MR. COHAN:** Thank you.

2 (Exhibit published.)

3 **BY MR. COHAN:**

4 **Q.** Mr. Mottahedeh, do you recognize this letter?

5 **A.** Yes.

6 **Q.** Did you write this letter?

7 **A.** Yes.

8 **Q.** What was your purpose in writing this letter?

9 **A.** When the IRS ruled against Mr. Grant at the collection due
10 process hearing, this letter was to appeal the ruling of the
11 IRS to the United States Tax Courts.

12 **Q.** And were you providing this letter to Mr. Grant because
13 you thought this was going to protect his rights?

14 **A.** Yes.

15 **Q.** Did you tell Mr. Grant that's what you were doing for him?

16 **A.** Yes.

17 **Q.** Okay.

18 Did you pursue this appeal to the tax court on Mr. Grant's
19 behalf by drafting things for him?

20 **A.** Yes.

21 **Q.** Let me show you what I believe has been admitted as
22 Exhibit 116.

23 Yes. It's admitted.

24 Do you have 116 before you, Mr. Mottahedeh?

25 **A.** (Reviewing document.)

1 Yes.

2 (Exhibit published.)

3 **BY MR. COHAN:**

4 **Q.** Do you recognize Exhibit 116?

5 **A.** Yes.

6 **Q.** Okay. I want to show the jury what this is.

7 Hmm? Doesn't have exhibit sticker on it. I represent
8 that this is Exhibit 116, but it doesn't seem to have an
9 exhibit sticker on it.

10 Well, it shows that the in lower right-hand corner, it is
11 Exhibit 116, but we don't have an exhibit sticker on it.

12 **THE COURT:** Okay. It's not. It's okay.

13 **BY MR. COHAN:**

14 **Q.** Okay. You so said you recognize this document. How do
15 you recognize it, sir?

16 **A.** I wrote it.

17 **Q.** And what is the purpose of writing this document?

18 **A.** It's to -- Well, it's a motion for leave or permission to
19 file a motion to vacate the -- or put aside the dismissal of
20 his case that the tax court had done, so basically to
21 reinstate his case with the United States Tax Court.

22 **Q.** Was it your understanding that Mr. Grant had never
23 received a hearing constituting a collection due process
24 hearing?

25 **MR. SAMPSON:** Objection, Your Honor, relevance as to

1 the witness's understanding.

2 **THE COURT:** Sustained.

3 **BY MR. COHAN:**

4 **Q.** Did you tell Mr. Grant that you were doing this to protect
5 his rights, vis-a-vis the IRS?

6 **A.** Yes.

7 **Q.** And so you were appealing what the IRS had denied to the
8 U.S. Tax Court; is that right?

9 **A.** Yes.

10 **Q.** And that's what this motion for leave to file motion to
11 vacate order of dismissal for lack of jurisdiction is, as you
12 understand it?

13 **A.** Yes, it's part of that process.

14 **Q.** Okay.

15 **MR. COHAN:** I don't have this on my list. Bear with
16 me just a moment, Your Honor. I'm looking at my exhibit list,
17 and I don't seem to have it on my list, but I have an Exhibit
18 117 that I believe was admitted.

19 **THE COURT:** Was 117 admitted?

20 **THE CLERK:** Yeah.

21 **THE COURT:** Okay.

22 (Pause in the proceedings.)

23 **THE COURT:** Do you not have a copy of it?

24 **MR. COHAN:** No, I do have a copy of it. It just
25 wasn't on my exhibit list, so I didn't know it was admitted

1 but now I've heard that it is, and I do have it.

2 It also is lacking an exhibit sticker, but in the lower
3 right-hand corner, it shows that it's Exhibit 117.

4 **THE COURT:** Okay. We can take care of it later.

5 **MR. COHAN:** Okay. Thank you.

6 May I display it?

7 **THE COURT:** Um-hmm.

8 (Exhibit published.)

9 **MR. COHAN:** Thank you.

10 **Q.** Mr. Mottahedeh, do you recognize this document that is
11 Exhibit 117?

12 **A.** Yes.

13 **Q.** It is -- looks like two pages -- no, it is three pages.
14 Excuse me.

15 **A.** Yes.

16 (Exhibit published.)

17 **BY MR. COHAN:**

18 **Q.** Did you fill out the places on this document that call for
19 entries by someone who is trying to file an amended petition?

20 **A.** Yes.

21 **Q.** And what were you seeking to do when you prepared the
22 amended petition for Mr. Grant?

23 **A.** This is part of challenging the IRS having ruled against
24 Mr. Grant, appealing you (sic) to the tax court and amending
25 the petition.

1 Q. And did you provide it to Mr. Grant for him to sign and
2 send to the tax court?

3 A. Yes.

4 Q. As far as you know, did he do so?

5 A. Yes.

6 Q. Okay.

7 Inviting your attention to what I believe is the next
8 exhibit in your book, which is Exhibit 602.

9 A. (Reviewing document.)

10 THE COURT: Is that in evidence?

11 MR. COHAN: No, it's not, Your Honor. I have to lay
12 foundation -- this witness.

13 THE COURT: Okay.

14 BY MR. COHAN:

15 Q. Do you have it before you, sir?

16 A. Yes.

17 Q. 602?

18 A. Yes.

19 Q. Do you recognize Exhibit 602?

20 A. Yes.

21 Q. And this -- Let's see.

22 Appears to be a two-page document?

23 A. Yes.

24 Q. How is it that you are able to recognize this document?

25 A. I wrote it for Mr. Grant.

1 **Q.** And what was the purpose of writing this letter for
2 Mr. Grant? What were you hoping to accomplish?

3 **A.** Hmm --

4 **Q.** Well, first of all, you apologize for not attending a
5 meeting that was scheduled by Mr. McPherson on May 24th of
6 2007, right?

7 **MR. SAMPSON:** Objection, Your Honor. Counsel's
8 testifying, leading questions.

9 **THE COURT:** Yeah, let him answer the question first.

10 **MR. COHAN:** Sorry.

11 **THE WITNESS:** (Reviewing document.)

12 Could you repeat question, please?

13 **BY MR. COHAN:**

14 **Q.** Yes. What were you trying to accomplish by drafting this
15 letter for Mr. Grant to sign and send to Internal Revenue
16 Service Office of Division Counsel, attention Jeremy
17 McPherson?

18 **A.** Well, the IRS lawyer, Mr. McPherson, had written a letter,
19 as it says on May 16, 2007, to Mr. Grant. And so this is the
20 response and the communications with the attorney on --

21 I don't know how much more detail you want me to tell you
22 besides what's in the letter already.

23 **Q.** No, that's okay. Before you say anymore about it, I want
24 to move its admission.

25 **THE COURT:** Any objection?

1 **MR. SAMPSON:** No, Your Honor.

2 **THE COURT:** Admitted.

3 (Defendant's Exhibit 602 received in evidence)

4 **MR. COHAN:** May I display?

5 **THE COURT:** Yes.

6 **MR. COHAN:** Thank you.

7 **Q.** Okay. Mr. Mottahedeh --

8 (Exhibit published.)

9 **BY MR. COHAN:**

10 **Q.** You sent this -- Strike that.

11 Well, you sent this letter to Mr. Grant for him to sign
12 and send to Mr. McPherson at the address on it, correct?

13 **A.** Yes.

14 **Q.** And what did you hope to accomplish by -- or what did you
15 hope that Mr. Grant was going to accomplish by sending this
16 letter to Mr. McPherson at the Internal Revenue Service Office
17 of Division Counsel?

18 **A.** This was part of the process of him challenging the taxes
19 that the IRS claimed that Mr. Grant owed.

20 **Q.** Okay.

21 And so your understanding was Mr. Grant had to send some
22 letter of this type to maintain his position that he had no
23 liability for income taxes? This --

24 **A.** Yes.

25 **MR. SAMPSON:** Objection, relevance.

1 **THE COURT:** Yeah, I'm going to permit this one.

2 **THE WITNESS:** Yes.

3 **BY MR. COHAN:**

4 **Q.** Thank you.

5 Inviting your attention to what's been marked for purposes
6 of identification as Exhibit 604.

7 Do you recognize Exhibit 604?

8 **A.** Yes.

9 **Q.** And how do you recognize it?

10 **A.** This is the IRS's Motion for Summary Judgment against
11 Mr. Grant where the IRS asked the tax court to quickly and
12 summarily just rule against Mr. Grant without any kind of a
13 hearing whatsoever.

14 **MR. SAMPSON:** Objection, Your Honor. It's a
15 narrative. It's --

16 **THE COURT:** Yes.

17 **MR. SAMPSON:** -- speculative, hearsay.

18 **THE COURT:** Calls for a legal conclusion about what
19 the IRS was attempting to do this.

20 **MR. COHAN:** Well, I'm just asking --

21 (Simultaneous colloquy.)

22 **MR. COHAN:** -- his understanding, Your Honor.

23 **THE COURT:** I'm sustaining the objection.

24 **MR. COHAN:** Okay.

25 **Q.** So you received this document after it was sent to you by

1 Mr. Grant; is that right?

2 A. Yes.

3 Q. And did you do anything in response to this document based
4 on your understanding of how you might assist Mr. Grant in
5 protecting his rights?

6 A. Yes.

7 Q. Okay.

8 MR. COHAN: Your Honor, I think it's foundation for
9 what he did. Just for the --

10 THE COURT: He can describe what he did, but this is
11 the government's motion. It's --

12 MR. COHAN: Right. It is the government's motion.

13 THE COURT: No.

14 MR. COHAN: -- filed a response to it, but --

15 THE COURT: He can testify about how he responded.

16 MR. COHAN: Okay. So you're denying my motion to
17 admit this letter?

18 THE COURT: Yes.

19 MR. COHAN: Or this motion. Excuse me. Okay.

20 Then let's move on. And I would also move Exhibit 605,
21 but I'm assuming that Mr. McPherson's declaration in support
22 of the motion for summary judgment would be subject to the
23 same ruling.

24 THE COURT: Yes. Do you have an objection to it?

25 MR. SAMPSON: I do, Your Honor.

1 **THE COURT:** Okay. All right. I'm sustaining the
2 objection.

3 **BY MR. COHAN:**

4 **Q.** Okay. You responded -- in some form or fashion, you
5 drafted up something to oppose this motion for summary
6 judgment for Mr. Grant to file in the tax court, correct?

7 **A.** Yes.

8 **Q.** Inviting your attention to Exhibit 606. Do you see that?

9 **A.** Yes.

10 **Q.** Do you recognize this document?

11 **A.** Yes.

12 **Q.** What is this document?

13 **A.** This is the order of the United States Tax Court that
14 denied government's motion for summary judgment, ruling
15 against the government.

16 **Q.** Okay.

17 And was that in part based upon the opposition that you
18 provided for Mr. Grant to file opposing the motion for summary
19 judgment?

20 **A.** Yes.

21 **MR. COHAN:** I move its admission, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. SAMPSON:** I don't think there's a foundation with
24 this witness. I don't have a problem with its authenticity.

25 **THE COURT:** All right. No foundation for this

1 witness. Yeah.

2 **MR. SAMPSON:** He did not write it. He --

3 **THE COURT:** You didn't -- Yeah, you haven't
4 established a foundation for his even receipt of it. I mean,
5 it's a public document, though. It's a publicly filed
6 document.

7 **MR. COHAN:** I'll lay foundation.

8 **THE COURT:** Okay. If you would.

9 **MR. COHAN:** Okay.

10 **Q.** Do you recall when you first received the original of
11 which this Exhibit 606 is a copy?

12 **A.** Yes.

13 **Q.** Ands it forward to you by Mr. Grant?

14 **A.** Yes.

15 **Q.** And did you read it?

16 **A.** Yes.

17 **Q.** And did it indicate to you that what you'd provided to
18 Mr. Grant had successfully opposed to commissioner of Internal
19 Revenue's motion for summary judgment?

20 **A.** Yes.

21 **MR. COHAN:** Move its admission.

22 **THE COURT:** Okay. I'll will admit 606.

23 **MR. COHAN:** May I display?

24 **THE COURT:** Yes.
25

(Defendant's Exhibit 606 received in evidence)

(Exhibit published.)

BY MR. COHAN:

Q. Mr. Mottahedeh, I'm inviting your attention to the last three lines of what's on page 1.

Do you see that?

A. Yes.

Q. Do you know what it means when the order says, quote, in this case, there is a genuine issue of material fact as to whether petitioner can rebut the presumption of official regularity and delivery?

MR. SAMPSON: Objection, Your Honor. Counsel's testifying, and the document should speak for itself.

THE COURT: Yeah, the document speaks for itself. He can't give a legal opinion as to what a legal document means.

MR. COHAN: Okay.

Q. Did you take any action based on your understanding of what this order means, sir?

A. No.

Q. Okay. And is that because you believe that you needn't take any?

MR. SAMPSON: Objection, relevance.

THE COURT: It's leading. You can ask him why he did not take any action. But you can't tell him why you think he did not take any action.

1 **MR. COHAN:** Stand corrected, Your Honor.

2 **THE COURT:** Okay.

3 **BY MR. COHAN:**

4 **Q.** Why didn't you take any action in response to receiving
5 this order from Mr. Grant saying that the motion for summary
6 judgment by the commissioner was denied?

7 **A.** Because Mr. Grant won this part of the battle. There was
8 nothing at this stage to do. This part of the battle was won
9 by Mr. Grant.

10 (Pause in the proceedings.)

11 **BY MR. COHAN:**

12 **Q.** Inviting your attention Exhibit 121 -- I'm flipping
13 through several exhibits.

14 **A.** (Reviewing document.)

15 I'm sorry. 121?

16 **Q.** Yes, sir. Let me know when you have it before you.

17 **A.** (Reviewing document.)

18 **Q.** Got it?

19 **A.** Um, 121? I don't see it.

20 **THE COURT:** It has a "G" in front of it.

21 **THE WITNESS:** (Reviewing document.)

22 **BY MR. COHAN:**

23 **Q.** Pretend the "G" is not there, just 121.

24 **A.** Oh, yes.

25 **Q.** Okay. Do you recognize this document?

1 **A.** Yes.

2 **Q.** And what is this document?

3 **A.** This is a -- a -- this is an -- on appeal from the Ninth
4 Circuit Federal Court of Appeal, in this case of Mr. Grant.
5 This is the court of appeal that handled the appeal of
6 Mr. Tack -- of the tax court decision that was ruled against
7 Mr. Grant. This is the decision of the court of appeal.

8 **Q.** Okay. Did you receive this from Mr. Grant at some point
9 shortly after July the 6th of 2009 when it was filed?

10 **A.** Yes.

11 **Q.** Did you read the order?

12 **A.** Yes.

13 **Q.** Inviting your attention to the second page of this order.
14 Again, Your Honor, I have marked --

15 **MR. SAMPSON:** All the copies are marked, Your Honor.

16 **THE COURT:** All right. Well, we have to clean it up.

17 **MR. SAMPSON:** Government's 121, we could pull it up,
18 but I think this one's inappropriate with marked --

19 **THE COURT:** Yeah, mine is, too.

20 **MR. COHAN:** Very well.

21 **THE COURT:** There's a clean one in the courtroom.

22 Please produce it for me.

23 (Pause in the proceedings.)

24 **MR. COHAN:** Okay. Can we turn the page?

25 (Exhibit published.)

1 **MR. COHAN:** It's a two-page document.

2 **Q.** Okay. Mr. Mottahedeh, I want to invite your attention to
3 the third paragraph on this page. Do you see the third
4 paragraph?

5 **A.** Yes.

6 **Q.** Can you read that? Says Grant forfeits review of District
7 Court's orders?

8 **MR. SAMPSON:** Your honor, I -- I object again. The
9 document does speak for itself. He's just asking the witness
10 to read a Ninth Circuit order.

11 **THE COURT:** Yes, it does.

12 **MR. COHAN:** I'm just laying foundation.

13 **MR. SAMPSON:** It's in, Your Honor.

14 **THE COURT:** It's an exhibit that's in. This witness
15 doesn't need to read it. The jury can read it.

16 **MR. COHAN:** Very well, Your Honor.

17 **Q.** Do you understand that there were no proceedings in the
18 District Court in this case?

19 **A.** Yes.

20 **Q.** Do you understand why the Court of Appeals thinks,
21 according to this order, that there were District Court orders
22 in this case when there were no District Court orders?

23 **MR. SAMPSON:** Objection, relevance.

24 **THE COURT:** He can't testify as to why the Court of
25 Appeals does anything that it does. He's not a lawyer, and

1 even if he was, that would be inappropriate.

2 **BY MR. COHAN:**

3 **Q.** Did you discuss this order with Mr. Grant after it was
4 received?

5 **A.** Yes.

6 **Q.** Did you attempt to explain to him what this language
7 "Grant forfeits review of District Court's orders" means?

8 **A.** Yes, I did.

9 **Q.** Were you able to understand what it meant?

10 **A.** Yes.

11 **Q.** What did it mean to you --

12 **THE COURT:** Counsel --

13 **BY MR. COHAN:**

14 **Q.** -- when it referred to --

15 **THE COURT:** His opinion as to what a court meant in
16 his order is not relevant here.

17 **MR. COHAN:** Only insofar as --

18 **THE COURT:** Only what he had in response to it.

19 **BY MR. COHAN:**

20 **Q.** What did you tell Mr. Grant about the Court of Appeals
21 saying that Grant forfeits review --

22 **THE COURT:** No. Not what he said. What he did --

23 **MR. COHAN:** I'm talking about --

24 **THE COURT:** -- in response to this order.

25 **MR. COHAN:** Okay.

1 Q. Did you have a conversation with -- with Mr. Grant in
2 which you discussed this portion of this Ninth Circuit order
3 to which I've just invited your attention?

4 A. Yes.

5 Q. And what did you tell him?

6 MR. SAMPSON: Your -- Hearsay, Your Honor.

7 THE COURT: Sustained.

8 MR. COHAN: It's not offered for the truth. It's
9 offered for the effect on Mr. Grant, Your Honor.

10 THE COURT: Sustained.

11 MR. COHAN: Your Honor, I'd request that you take
12 judicial notice of the fact that since Mr. Grant persuaded --
13 excuse me -- prevailed on the motion for summary judgment,
14 that this Ninth Circuit order makes absolutely no sense to say
15 that Mr. Grant forfeited --

16 THE COURT: You want me to take judicial notice that
17 a Ninth Circuit order makes no sense?

18 MR. COHAN: I do, Your Honor.

19 THE COURT: Well, no.

20 MR. COHAN: Since it does not.

21 THE COURT: That's not going to happen, counsel. The
22 Ninth Circuit is the circuit over this entire jurisdiction.
23 It's not for the trial court to question the legitimacy of an
24 order issued by a higher court. No. I will not do that.

25 MR. COHAN: Even if it's obviously nonsensical?

1 **MR. SAMPSON:** Your Honor, counsel's testifying.

2 **THE COURT:** No, I will not do that.

3 **MR. SAMPSON:** Argumentative.

4 **THE COURT:** And it's entirely inappropriate. No.

5 **BY MR. COHAN:**

6 **Q.** Sir, were there any district court orders entered on -- in
7 connection with Mr. Grant?

8 **A.** Not at this time.

9 **Q.** Okay.

10 So there was no proceeding involving a district court that
11 is being addressed by the circuit, as you understand it?

12 **A.** That's right. There was no district court order of any
13 kind that we were challenging at this time.

14 **Q.** Now, is the tax court the same as the district court,
15 Mr. Mottahedeh?

16 **A.** No, it is not.

17 **MR. COHAN:** Okay.

18 **Q.** Now --

19 **THE COURT:** Now, counsel, he's not a lawyer. You
20 have no foundation for these opinions that you're bringing in
21 through him. None.

22 **MR. COHAN:** Fine. I'll lay foundation.

23 **Q.** Do you know the difference between United States District
24 Court and the United States Tax Court, Mr. Mottahedeh?

25 **A.** Yes.

1 Q. What is the difference?

2 THE COURT: No. The next question is how does he
3 know the difference.

4 BY MR. COHAN:

5 Q. How do you --

6 THE COURT: What qualifications does he have to be
7 able to tell the difference between two federal courts?

8 MR. COHAN: He can read English, Your Honor.

9 THE COURT: Counsel, ask the question that I am
10 permitting you to ask and don't argue back with me on it.

11 MR. COHAN: I apologize, Your Honor.

12 Q. How do you know that there's a difference between the
13 United States Tax Court and a United States District Court?

14 A. Because I read the laws. I read the court cases that
15 describe these differences. It's in English. I read English
16 well. And it's very clear that they're not in same.

17 Q. Do you get juries in U.S. Tax Court?

18 MR. SAMPSON: Objection, Your Honor. He's -- Again,
19 he's not an attorney.

20 MR. COHAN: Take judicial notice of it.

21 THE COURT: This is something he could find if he
22 went to the website. Overruled.

23 BY MR. COHAN:

24 Q. So you --

25 A. You get no jury trial in tax court.

1 Q. Are judges of the tax court the same as U.S. District
2 judge, like Her Honor in this courtroom?

3 MR. SAMPSON: Relevance, Your Honor.

4 THE COURT: Sustained.

5 (Pause in the proceedings.)

6 BY MR. COHAN:

7 Q. Inviting your attention, if I may, sir, to Exhibit 608.
8 Do you see that?

9 A. (Reviewing document.)

10 608?

11 Q. Yes, sir, 608.

12 A. (Reviewing document.)

13 I'm having trouble finding it.

14 MR. COHAN: May I approach, Your Honor?

15 THE COURT: Yes.

16 (Off-the-record discussion between the witness and Mr. Cohan.)

17 MR. COHAN: All right. I'm going to give you my
18 copy.

19 May I have just a moment, Your Honor?

20 THE COURT: All right.

21 (Pause in the proceedings.)

22 MR. COHAN: May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. COHAN: Let him use my copy.

25 Q. Sir, do you recognize Exhibit 608?

1 **A.** Yes.

2 **Q.** What is Exhibit 608?

3 **A.** It's a statement I provided for Mr. Grant to send to tax
4 court instead of being -- appearing before the court to make
5 his position known in writing.

6 **Q.** So you drafted up the entirety of what constitutes Exhibit
7 608 for Mr. Grant to file with the tax court; is that right?

8 **A.** Yes.

9 **Q.** And to the best of your knowledge and belief, did
10 Mr. Grant sign it and file it with the tax court?

11 **A.** Yes.

12 **MR. COHAN:** Move its admission at this time, Your
13 Honor.

14 **THE COURT:** Any objection?

15 **MR. SAMPSON:** No, Your Honor.

16 **THE COURT:** Admitted.

17 (Defendant's Exhibit 608 received in evidence)

18 **MR. COHAN:** May I approach, Your Honor?

19 And I want to display it to the jury.

20 (Exhibit published.)

21 (Pause in the proceedings.)

22 **BY MR. COHAN:**

23 **Q.** Do you recall what was the essence of this petitioner's
24 statement that you drafted for Mr. Grant to file with the tax
25 court?

1 **A.** Yes.

2 **Q.** Can you tell the ladies and gentlemen of the jury what it
3 was that you drafted up here?

4 **A.** Essentially that the IRS appeals officer has wrongfully
5 denied a hearing, a face-to-face hearing to Mr. Grant which he
6 was entitled under law. And also reminding the court that
7 Ninth Circuit Court of Appeal, which in this case would be
8 above -- I mean -- I'm sorry -- the Eighth Circuit Court of
9 Appeal, the one of the courts of appeal, had ruled that an
10 appeal --

11 **MR. SAMPSON:** Your Honor, I object. He's talking
12 about another court case.

13 **THE COURT:** Yes. I -- I don't know what the
14 relevance is of another court case.

15 **MR. COHAN:** I'll --

16 **THE COURT:** He can summarize what this response is.

17 **BY MR. COHAN:**

18 **Q.** Okay. Did you cite the case of *Robinette vs. The*
19 *Commissioner* in the Eighth Circuit in this petitioner's
20 statement, the first page of it?

21 **A.** Yes, I did.

22 **Q.** And why did you do that, sir? What was the reference to
23 *Robinette v. Commissioner* supposed to do for Mr. Grant?

24 **MR. SAMPSON:** Your Honor, this is irrelevant. I
25 object.

1 **THE COURT:** I'd like to hear the answer to this
2 before I sustain the objection.

3 **THE WITNESS:** Because in *Robinette*, the Court of
4 Appeal has said that there is not supposed to be a -- a trial
5 in this collection due process hearing appeals, as was done in
6 this case.

7 **THE COURT:** All right.

8 **MR. SAMPSON:** Your Honor, the answer -- I'm sorry.
9 The answer was not responsive to the question.

10 **THE COURT:** It isn't, and I'm going to close down
11 this line of questioning.

12 **MR. COHAN:** Okay.

13 **THE COURT:** Objection's sustained.

14 Jury is ordered to disregard the last answer.

15 (Pause in the proceedings.)

16 **BY MR. COHAN:**

17 **Q.** Do you have Exhibit 128?

18 **A.** Yes.

19 **Q.** Forgive the "G". In front of it?

20 Do you recognize Exhibit 128, sir?

21 **A.** Yes.

22 **Q.** What is Exhibit 128?

23 **A.** It's the letter I wrote for Mr. Grant in response to the
24 IRS summons issued against Mr. Grant.

25 **Q.** And do you recall who Ms. Young-Lau is who's the addressee

1 on this letter?

2 **A.** The IRS Revenue Agent who had summoned Mr. Grant.

3 **Q.** And what was your purpose in drafting this letter and
4 providing it to Mr. Grant?

5 How was this going to help Mr. Grant, as you understood
6 it?

7 **A.** To --

8 (Reviewing document.)

9 **MR. SAMPSON:** Your Honor, I -- I'm not sure if
10 there's a refreshing going on or if he's --

11 **THE WITNESS:** I was refreshing myself.

12 **THE COURT:** Excuse me.

13 **THE WITNESS:** Yes. I'm sorry.

14 **THE COURT:** He's addressing the court, not you.

15 **THE WITNESS:** I apologize.

16 **THE COURT:** What's your objection?

17 **MR. SAMPSON:** It appears that he was reading the
18 document to refresh his recollection before he answered. And
19 so I think that we would have to establish that he lacked a
20 recollection of what the letter was about first.

21 **THE COURT:** Okay. That's proper procedure. Yes.

22 Ask him if he recalls. If he doesn't, he can look at it.

23 **BY MR. COHAN:**

24 **Q.** Sir, do you recall that you were the person who actually
25 wrote this letter?

1 **A.** Yes.

2 **Q.** Do you not recall exactly what you wrote approximately
3 seven years ago?

4 **A.** No, I do not recall exactly what I wrote without
5 refreshing myself.

6 **Q.** Okay. Would you take a moment to refresh your
7 recollection, and then I'll just ask you a couple of questions
8 and we can get out of here for the day.

9 **A.** Sure.

10 (Reviewing document.)

11 Okay.

12 **Q.** Do you now recall the purpose that you wrote this letter
13 for -- to send to Ms. Young-Lau -- or strike that -- for
14 Mr. Grant to sign and send to Ms. Young-Lau?

15 **A.** Yes, the purpose was to let Ms. Young-Lau know that the
16 IRS summons by itself does not have any power, that they
17 would -- needs to be a court order before Mr. Grant could be
18 forced to give information about himself to the IRS in
19 response to IRS summons.

20 **Q.** Okay.

21 And to the best of your knowledge and belief, you provided
22 this letter to Mr. Grant, and he signed it on the third page
23 of Exhibit 168?

24 **A.** Yes.

25 **Q.** Okay.

1 May I display, Your Honor? This one's in evidence.

2 **THE COURT:** Yes.

3 (Exhibit published.)

4 **MR. SAMPSON:** Your Honor, at this time -- and I know
5 this document is in evidence -- it discusses the law, and I
6 think it would be appropriate to give a limiting instruction
7 to the jury about whether they should take this legal argument
8 for the truth of the matter stated or for some other purpose.

9 **THE COURT:** Okay.

10 All right. Ladies and gentlemen, I instruct you that the
11 legal material that is admitted here at trial or discussed by
12 this or any other witness is relevant only on the question of
13 the defendant's state of mind.

14 It does not establish what the law is. The court will
15 instruct you as to what law actually applies to this case.

16 **MR. COHAN:** Okay. Thank you.

17 Again, this will be in evidence so the jurors can look at
18 it as much as they like. We won't take your time to read it
19 now.

20 **Q.** Inviting your attention to what's been marked and admitted
21 as Exhibit 129, do you have that before you, sir?

22 **A.** (Reviewing document.)

23 Yes.

24 **Q.** Do you recognize what's been marked for purpose of
25 identification and admitted as Exhibit 129?

1 **A.** Yes.

2 **Q.** And how did you receive it?

3 **A.** Mr. Grant had provided me a copy of this letter.

4 **Q.** Okay. Inviting your attention to the third page of this
5 letter, it says, "description of documents requested."

6 Do you see that?

7 **A.** Yes.

8 **Q.** And inviting your attention to paragraph No. 2, says --
9 Again, my copy is marked.

10 Do you have an unmarked one, Your Honor?

11 **MR. SAMPSON:** Do you want us to show it?

12 **MR. COHAN:** Sure. Thank you, Larry -- Mr. Garland.

13 Excuse me.

14 **MR. SAMPSON:** Mr. Cohan, I'm sorry.

15 **MR. COHAN:** Did you call me something else?

16 (Off-the-record discussion.)

17 (Exhibit published.)

18 **BY MR. COHAN:**

19 **Q.** So may I invite your attention to the paragraph No. 2 that
20 says, we have no filings of your 2005 and subsequent
21 individual income tax returns.

22 Do you see that?

23 **A.** (Reviewing document.)

24 Say it again, please? Where? Oh, paragraph No. 2, yes,
25 uh-huh.

1 Q. Okay. Inviting your attention to the language, please be
2 aware that Internal Revenue Code Section 6001 and 6011 require
3 that each person who owes (sic) -- who owes income -- who owes
4 income files a return.

5 Do you see that?

6 A. Yes.

7 Q. Did you discuss this with Mr. Grant?

8 A. Yes.

9 Q. Did you make any statements to him to the effect that
10 Section 6001 and 6011 did or did not apply to him?

11 MR. SAMPSON: Objection, Your Honor, its leading.
12 It -- It's --

13 THE COURT: It's hearsay.

14 MR. SAMPSON: It's double-hearsay.

15 THE COURT: Sustained.

16 MR. COHAN: I'm asking him --

17 THE COURT: Sustained.

18 MR. COHAN: -- if he made statements. It's not
19 hearsay to ask him if he made a statement.

20 THE COURT: You're asking about an out-of-court
21 statement that he made? Why isn't that hearsay?

22 MR. COHAN: Because he's a witness of the statement,
23 and I'm not offering it for the truth, Your Honor.

24 THE COURT: What are you offering it for?

25 MR. COHAN: For its effect on Mr. Grant.

1 **THE COURT:** The effect on Mr. Grant?

2 **MR. COHAN:** Yes.

3 **THE COURT:** I don't understand what you mean.

4 **MR. COHAN:** The effect on Mr. Grant of what
5 Mr. Mottahedeh may have told him about whether 6001 and 6011
6 actually applied to Mr. Grant.

7 **THE COURT:** And I'm not sure what you mean "the
8 effect on Mr. Grant." In fact, I'd like to have a full
9 discussion with you about this line of questioning, so I think
10 we will allow the jury to be excused, and then we can talk in
11 their absence and we'll start again tomorrow.

12 **MR. COHAN:** Thank you.

13 **THE COURT:** Okay.

14 All right, ladies and gentlemen of the jury, thank you for
15 your patience. Keep in mind the instruction that I've given
16 you every day. Do not discuss the case with anyone, and do
17 not allow anyone to discuss the case with you. Do not do any
18 independent research and keep an open mind until all the
19 evidence is in.

20 We'll see you tomorrow morning at 8:30.

21 (The following proceedings were heard out of the presence
22 of the jury:)

23 **THE COURT:** Mr. Mottahedeh, you may step down. Thank
24 you.

25 **MR. SAMPSON:** Your Honor, before this witness leaves,

1 I would just ask the court to remind the witness -- to remind
2 parties not to discuss his testimony because he's still on the
3 stand with him.

4 **THE COURT:** Yes. Mr. Mottahedeh?

5 **THE WITNESS:** Yes, Your Honor.

6 **THE COURT:** You may not discuss your testimony --
7 since you've already started testifying, you may not discuss
8 your testimony with any of the participants in this trial.

9 **THE WITNESS:** Okay.

10 **THE COURT:** You understand?

11 **THE WITNESS:** Yes.

12 **THE COURT:** And you may not approach any of the
13 jurors in this case. Do you understand?

14 **THE WITNESS:** Yes.

15 **THE COURT:** All right. Thank you.

16 All right.

17 Couple of things. With regard to your request for
18 judicial notice of the error of the Court of Appeals, I mean,
19 I'm totally floored by such a request. It's obviously
20 appropriate for the court to perhaps take judicial notice of
21 the existence of a publicly filed document, but it certainly
22 isn't appropriate to take judicial notice that another court,
23 particularly one that reviews this court's work, has committed
24 an error.

25 Indeed, under Rule 201, the court may only judicially

1 notice facts that are generally known within the trial court's
2 territorial jurisdiction, not something that's suitable --
3 that's --

4 **MR. COHAN:** Or not reasonably --

5 **THE COURT:** -- subject to dispute or question.

6 I mean, I can't even believe that you would make such a
7 request of this court. But with that said, let's move on.

8 I'd like to hear about the -- where we're going with this
9 line of questioning. And just tell me what your plan is with
10 regard to the -- I believe the last question had to do with an
11 out-of-court statement made by the witness but you say you're
12 offering it to prove the effect. What -- what do you mean the
13 effect on Mr. Grant?

14 **MR. COHAN:** The issue --

15 **MR. SAMPSON:** Your Honor, Mr. Mottahedeh is still in
16 the courtroom.

17 **THE COURT:** Oh.

18 **THE WITNESS:** Shall I leave?

19 **THE COURT:** Yes, you should. All witness who will
20 testify in the trial must be excluded when trial's in session
21 and they're not on the stand.

22 **THE WITNESS:** Am I excused for the day?

23 **THE COURT:** Pardon me?

24 **THE WITNESS:** Am I excused for the day?

25 **THE COURT:** You're excused until tomorrow morning at

1 8:30.

2 Are there any other witnesses in the court?

3 **MR. SAMPSON:** I don't believe so, Your Honor, not
4 that have been identified by the defense.

5 **THE COURT:** Okay.

6 **MR. COHAN:** The only other witness we have is in the
7 courtroom. His name is Richard Grant.

8 **THE COURT:** Well, he's a party, and he can stay.

9 All right. So tell me what you're doing.

10 **MR. COHAN:** I'm laying the foundation for Mr. Grant
11 to testify that he was told things by Mr. Mottahedeh and
12 believed them. And Mr. Mottahedeh -- Mottahedeh was here so
13 he could say yes, I told Mr. Grant X, Y, Z. You aren't
14 required to file a tax return because these things don't apply
15 to you.

16 Now, if Mr. Grant testifies to that, the -- the government
17 can cross-examine him, say, well, Mr. Mottahedeh never told
18 you that. So I've got him here to say, yeah, I did tell him
19 that. Now, what effect it had on Mr. Grant and his intent in
20 terms of reliance material is for the jury to determine.

21 But how else would I show that Mr. Mottahedeh made a
22 statement to Mr. Grant about whether he was or was not
23 required to file income tax return, except through his
24 testimony and Mr. Grant's testimony? There is no other way.

25 **THE COURT:** Hmm. Okay.

1 Response.

2 **MR. SAMPSON:** Your Honor, this witness cannot testify
3 as to the effect on Mr. Grant. Only Mr. Grant can do that. I
4 don't see a foundational issue that Mr. Mottahedeh's testimony
5 resolves. It's still hearsay.

6 **THE COURT:** Well, counsel has just said he's not
7 offering it to show that the -- he's not going to ask the
8 witness how did it affect Mr. Grant. That's correct, right?

9 (Simultaneous colloquy.)

10 **THE COURT:** Just that the statement was made --

11 (Off-the-record discussion.)

12 **THE COURT:** Just that the statement was made, which
13 will give some support to Mr. Grant's claim as to what he
14 believed. Is that -- Do I have that right?

15 **MR. COHAN:** You do, Your Honor. It's not offered for
16 the truth. It's offered that it was made, and then Mr. Grant
17 will have to testify what, if any, effect it had on his
18 beliefs concerning whether he did or did not have a legal duty
19 to file income tax returns and pay taxes.

20 **THE COURT:** Okay.

21 Response?

22 **MR. SAMPSON:** As long as the jury's appropriately
23 instructed, Your Honor, I -- I suppose that that's not
24 inappropriate.

25 **THE COURT:** Did we have some -- we had some

1 discussion about the use of hearsay to show the effect on the
2 listener and that, for the most part, had to do with
3 statements that the IRS made to Mr. Grant.

4 Wouldn't that same apply -- and the limiting instruction I
5 think that we talked about, would apply under this scenario as
6 well?

7 **MR. COHAN:** Exactamon (phonetic).

8 **THE COURT:** Is that the position you're taking.

9 **MR. COHAN:** Exactly.

10 **THE COURT:** Okay.

11 **MR. SAMPSON:** I'm not sure, Your Honor.

12 It's the statement of a -- essentially IRS, a party to the
13 opposing party. This is not an analogous situation. I'm not
14 sure how to parse it other than that.

15 **THE COURT:** Well, what difference does it make that
16 the IRS is the opposing party to the effect on the listener?

17 **MR. SAMPSON:** I guess the effect on the listener
18 would be non-hearsay.

19 **THE COURT:** I think that that's kind of what that
20 limiting instruction went to. You all prepared one, I
21 thought.

22 **MR. COHAN:** We did.

23 **THE COURT:** And it says, you are about to hear
24 evidence that employees of the IRS made statements to the
25 defendant. I instruct you that this evidence is admitted only

1 for the limited purpose of demonstrating the defendant's state
2 of mind, knowledge, or the effect the statement had on the
3 defendant. Therefore, you must consider it only for that
4 limited purpose and not for any other.

5 I'm not so sure I see why it makes a -- I know this was
6 written with something else in mind, but why wouldn't this
7 apply here?

8 **MR. SAMPSON:** I'm -- I think that it could be crafted
9 in a way where it would.

10 **THE COURT:** Okay. All right. Then I'll allow it.
11 If -- Why don't I just change it and just take out the
12 part about the employees of the revenue service.

13 **MR. COHAN:** Perfect, Your Honor.

14 **THE COURT:** That would work?

15 **MR. COHAN:** That's the whole point of the inquiry.

16 **THE COURT:** All right. Then that's what we'll do.
17 Is there anything else that we need to address, and is
18 tomorrow going to be our last day --

19 **MR. COHAN:** I believe so.

20 **THE COURT:** -- of evidence?

21 **MR. COHAN:** Yes. I believe so, because this is my
22 second-last witness. After Mr. Mottahedeh's testimony is
23 concluded, my last witness is Mr. Grant. And that's going to
24 take a while.

25 **THE COURT:** Okay.

1 **MR. COHAN:** He's got some explaining to do.

2 **THE COURT:** So probably between your direct and
3 cross, it will take all day.

4 **MR. COHAN:** I would assume so because we have
5 considerable video that we would like to play and documents
6 that I can only introduce through Mr. Grant that he read it,
7 relied upon it, and it's all relevant to his intent, Your
8 Honor.

9 **THE COURT:** Right. Okay. So -- All right.

10 I'm sorry. I'm just -- My blood sugar's dropping. I need
11 a break. But we'll plan on just a regular day, and as we
12 talked about, on Tuesday, we'll do the -- any rebuttal witness
13 and/or --

14 **THE CLERK:** Monday?

15 **THE COURT:** Tuesday?

16 (Simultaneous colloquy.)

17 **THE COURT:** Monday. Monday. Monday. Tomorrow's
18 Friday.

19 **MR. COHAN:** Right.

20 **THE COURT:** We'll have -- We'll conclude with the
21 witness that's currently on the stand. Have Mr. Grant
22 testify. And hopefully we'll get through Mr. Grant's
23 testimony and cross by the end of the day tomorrow.

24 And then whatever evidence is left, we will hear on Monday
25 morning and have closing arguments and instructions

1 immediately thereafter. It will be a full day. I can tell
2 the jury tomorrow that Monday will be a full day.

3 **MR. COHAN:** Tomorrow, Your Honor, my understanding
4 was from previous statements by the court that we would have
5 our instruction conference tomorrow afternoon?

6 **THE COURT:** Tomorrow afternoon.

7 **MR. COHAN:** Okay.

8 **MR. SAMPSON:** Yes, Your Honor. I think that's
9 appropriate. I think we're expecting -- if we put on a
10 rebuttal case, we don't think it will be very long. And we
11 would do that on Monday morning.

12 **THE COURT:** Okay. All right. All right. So it
13 sounds like we're ready to go.

14 **MR. SAMPSON:** Yes, Your Honor.

15 **THE COURT:** All right. So what we'll do tomorrow,
16 though, assuming we have as full a day as we did today, we'll
17 have a lunch break and then come back and talk about
18 instructions, 'cause I don't think we can go straight through.

19 **MR. SAMPSON:** Thank you, Your Honor.

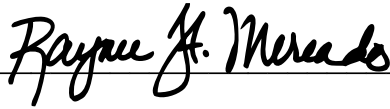
20 **MR. COHAN:** Speaking of blood sugar, I really like
21 that idea. Thank you.

22 (Proceedings were concluded at 1:50 P.M.)

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25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

Friday, February 17, 2017